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BY

OLIVER SMITH, M.A.,

AND

FRANCIS TAYLOR PIGGOTT, M.A., LL.M.,

Barristers-at-Law.

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BY

T. P. TASWELL-LANGMEAD, B.C.L., OXON.,

Late Professor of Constitutional Law and History, University College, London,

AND

C. H. E. CARMICHAEL, M.A., OXON.,

AND CONTINUED BY

C. H. E. CARMICHAEL, M.A., OXON.,

Foreign Secretary of the Royal Society of Literature,

AND

W. P. EVERSLEY, B.C.L., M.A., OXON.

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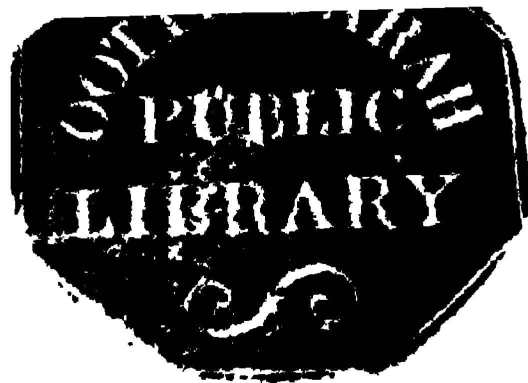
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THE

LAW MAGAZINE AND REVIEW.

No. CCLVIII.—November, 1885.

I.—THE LAND LAWS OF INDIA.

1. The Bengal Presidency: The Permanent Settlement and its Evils.

IN a former article in this *Review*,* on Indian Customary Law, I took occasion to describe, though necessarily in a brief manner, an Indian Village of the purest type, and to draw attention to some of the peculiarities which it had in common with the ancient Teutonic village-system. I purpose, with the present Paper, to commence a historical sketch of the Indian Land Laws, a subject that has always presented phenomena of no ordinary difficulty to the Administrator and Economist, and which in one province, that of Bengal, has recently engaged the serious and prolonged attention of the Indian Legislature, and has aroused a degree of popular excitement such as has rarely been witnessed in connection with any other legislative measure.

To deal with this subject in anything approaching a satisfactory manner, it is necessary at the outset to guard against a very prevalent but very fundamental error, which has proved the source of much mischief in the past, and has given rise to the enunciation of very erroneous principles, viz., that of indulging in generalities. Our early administrators, unacquainted with the varying peculiarities

* *Law Magazine and Review*, No. CCLIV., for November, 1884.

of land tenures in different parts of India, thought they could solve the difficulties of the subject by acting upon certain general principles in all cases, quite regardless of the fact that various stages of development had been reached in different parts of the country, and that institutions that were only in their infancy in some places, had reached a period of decay, and were being rapidly supplanted by those of a different character in other districts. Moreover, the successive waves of Mogul, Afghan, and Mahratta conquests had left more enduring traces in some parts than in others, here only casting an ephemeral shadow on the continuity of old customs and rights, and there uprooting the past and leaving behind them the hideous results of anarchy, oppression and bloodshed, in a general confusion, if not obliteration, of everything approaching a settled order of things. To attribute, therefore, to a certain form of terminology definite rights and privileges everywhere, was to overlook the history of the Past, and the varying circumstances of time and place. Elphinstone, in his *History of India*, criticises this radical error, and observes with much truth that "many of the disputes about the property of the soil have been occasioned by applying to all parts of the country facts which are only true of particular tracts; and by including in conclusions drawn from one sort of tenure other tenures totally dissimilar in their nature." To illustrate the accuracy of this statement, we need only refer to the meaning ascribed to the term *zemindar* in the legislation of 1793. It was then assumed that the term was a generic one to signify the possession of full proprietary rights, although it was in vain pointed out to the Government by such experienced men as Mr. Shore and Mr. Harrington, that the actual meaning of the term varied even in different parts of the Bengal Presidency, that it was not to be defined by any single term in our language, and that the relation of a

zemindar to *raiyat* could not be properly reduced to the simple principles of landlord and tenant. True, the Government of India and the Court of Directors at home professed not to be guided by "abstract theories drawn from other countries, and applicable to a different state of things," but as Mill, the historian, caustically remarks, "the fact was, that almost every step which they took was the result of an 'abstract theory,' commonly drawn from something in their own country, and either misdrawn or applied."

In order, therefore, to avoid the pitfalls which a tendency to generalisation too frequently involves, I propose to consider the subject at the head of the present article under a threefold aspect, as affecting the Provinces of Bengal, the North-West Provinces, and the Panjab. This mode of treatment, while avoiding the danger to which allusion has been made, will also best harmonise with the chronological development of British Power in the East, and will serve at the same time to emphasise the effect which the sad experience of hasty legislation in the oldest of the three named provinces fortunately had upon the Settlement operations in those of our two younger acquisitions of territory.

Commencing then with that territorial division now known for administrative purposes as the Bengal Presidency, we have but little authentic information as to the condition of land tenures under Brahminical or Muhammadan rule, prior to the grant of the *Diwani* to our own countrymen under the corporate title of the East India Company, wrung from an effete and titular Emperor of Delhi by the brilliant victories of Clive. We have, indeed, in the Brahminical Code of Manu a theoretical picture of a State presided over by a Sovereign called the "Lord paramount of the soil," to whom a share of the produce of the land, varying from a twelfth in times of prosperity, to one-fourth in periods of great public adversity, was payable,

and the internal administration of which was conducted by a chain of civil officers consisting of lords of single townships or villages, lords of 10 towns, of 100 towns, and of 1,000 towns, whose duty was also to collect the Sovereign's revenue. But, whether this was a true picture of the state of things that actually prevailed in practice at the period when this Code is believed to have been composed, viz., the ninth century before Christ,* and whether, if so, it continued to survive in whole or in part, down to the period of the Muhammadan Conquest, we possess no positive *data* for determining. We may, indeed, conjecture that the Brahmin author or compiler of the Code did not wholly draw his picture from his own imaginative soul, although he probably embellished the crude materials that every-day observation supplied, and converted an absolute and irresponsible chief, governed only by his own whims and the extent of his power, into a Sovereign acting in concert with his council of Brahmins, distributing even-handed justice, and guarding with jealous care the rights of his subjects, but more particularly the rights of the military and priestly castes. But, be this as it may, it is at all events very interesting to the modern student of History to find the graduated connection of the Village with the Township, and the Township with the State, thus marking the true development of all political society, so completely recognised at a period when his own country was still covered by pristine forests, and overrun by beasts and monsters long since extinct. It is certain, also, that despite the ravages of time, and the spoliation of the hordes of a Tamerlane, a Mahmud of Ghazni, a Nadir Shah, and the equally ruthless followers of a Sevaji, the congeries of small

* [Sir George Birdwood, in his interesting South Kensington Handbook, *The Industrial Arts of India* (preface dated, 1880), p. 38, gives B.C. 500, or "possibly as late as B.C. 300," as the probable date of the compilation of the Code of Manu, "in its present form."—ED.]

republics, the Village Communities, continued to survive, and formed the nucleus for future administrative regulations. Thus, the head man of the village generally stood forth as the representative of his little community in all dealings with the *de facto* Government of the time. Conquerors came and went, dynasties rose one after another into dignity and power on the ruins of those that preceded them, and then perished themselves in their turn, but the village community alone remained, the one solitary link to connect the Present with the Past. In Bengal, and especially in the southern parts, the village community, it is true, gradually lost many of those distinguishing features of cohesion and of a self-governing republic that are still existent in the sister communities of the North-West and the Panjab. But even in that Province, although Akbar at first attempted to assess individual fields, he soon discovered, according to Briggs, "that the practice was full of embarrassment," and he was reduced to the necessity of dealing with each village as a whole, and leaving it to the people themselves to distribute the portion payable by individuals. The famous Settlement, in A.D. 1582, of Todar Mull, the shrewd joint Vazir (with Mozaffar Khan) of the great Akbar, though probably based on an actual measurement of the land, recognised the village as the unit of the assessment, and settled the amount of the revenue with reference to the *Nirk*, or known rates prevailing within it. Village registers, embodying measurements and classifications of land, were prepared, in which the increase and diminution of land were yearly recorded. At a subsequent period the practice was adopted of uniting many villages or districts into one *zemindari*, which no doubt facilitated the realisation of the Government demand, but subjected a large body of the people to the control of one principal *zemindar*, or revenue collector, who thus possessed large opportunities of oppression and

extortion, which it would have been unlike the traditional character of the Bengali landholder if he had not completely availed himself of for his personal advantage and gain. And yet it is but just to say that, writing a little more than a couple of decades after the grant of the *Diwani* of the three provinces of Bengal, Behar, and Orissa to the East India Company, Sir John Macpherson, who assumed the reins of Government on the departure of Warren Hastings, spoke of the benefits of the Muhammadan system in terms of no scant praise. "Nothing," he said, "was more simple, correct and systematic than the ancient revenue system of this country. It was formed so as to protect the people who paid it from oppression, and secure to the Sovereign his full and legal rights. The helplessness and the poverty of the native, combined with the force of despotism to the establishment of such a system. For, to draw the greatest regular revenue from millions of unarmed cultivators and manufacturers, a system was necessary, that connected the security of every *raiyat* or peasant with the punctuality and equalisation of the payments. A thousand checks became necessary, from the accountant and assessor of the village, through many gradations, to the accountant-general of the Exchequer. Such was the nature of these checks, that if oppression had been committed, or a default of payment arose in any quarter, the error could be found out by investigation and re-examination of accounts, which were faithfully and regularly recorded in every district of the country, and from thence transferred, through different offices, to the final grand account of the year, in the *Khalsa* or Exchequer. This equal, regular, and just system, arose originally, perhaps, from the mild principles of the Gentu religion, which the ruling or the Brahmin power found it necessary to accommodate, for the support of the indolent and idle castes, to the equal assessment of the cultivation of the

soil and the industry of the manufacturer. When the ruling power devolved upon Chiefs not of the Brahmin race, and afterwards on the Muhammadan conqueror, both found it necessary to continue the original system. We have reason to suppose that the Muhammadans improved it by adopting some of the ancient Persian and Arabian revenue regulations." Such praise, coming from so high an authority, who may be said almost to be describing a contemporaneous system, is naturally deserving of great respect. But, however excellent this system may have been in theory, it can hardly be doubted that in the decay of the Muhammadan power and the assumption of independence by distant viceroys and governors, the great check of a central controlling authority, which was the grand feature of the old system, ceased to be exercised; and with the cessation of this wholesome authority the rapacity of the subordinate officials and of the revenue collectors became freed from restraint. "We know," wrote Mr. Shore in 1789, "that the *zemindars* continually imposed new cesses on their *rayats*, and having subverted the fundamental rules of collection, measure their exactions by the abilities of the *rayats*." An earlier experience of the state of things to which our Government succeeded is to be found in the famous Letter of Instructions of the 16th August, 1769, written by the President and Select Committee only four years after the grant of the *Diwani*. "The truth cannot be doubted," they write, "that the poor and industrious tenant is taxed by his *zemindar* for every extravagance that avarice, ambition, pride, vanity, or intemperance may lead him into, over and above what is generally deemed the established rent of his lands. If he is to be married, a child born, honours conferred, luxury indulged, and *nazeranas* or fines exacted even for his own misconduct, all must be paid by the *raiyat*. And, what heightens the distressful scene, the more opulent, who can better obtain redress for imposition, escape, while the

weaker are obliged to submit." In the utter collapse of Law and of a strong Executive, from which the above evils naturally resulted, the only rule available to determine a disputed right was "usage" or "custom," which varied in every district, and in support of which evidence could easily be bought. Thus a precedent, as Lord Cornwallis despairingly observed in a Minute of the 11th February, 1793, "might be pleaded in justification of every species of exaction and oppression."

A people accustomed to a cruel despotism, driven to falsehood, chicanery and fraud to avoid unjust demands; the land, to a large extent, uncultivated; trade paralysed; law and order sacrificed to personal interests; such was the actual donation conferred by the Emperor Shah Alum upon the East India Company by the grant of the *Diwani* in 1765, which established our *de facto* Sovereignty in the three provinces to which it referred, and changed the history of India, precisely as the peace of Hubertsburg had, two years previously, changed the history of Europe by crowning the heroic struggles of Frederick the Great and establishing the military genius of his nation. To evolve the principles of a civilised government out of such a tangled mass of discordant elements; to establish law, right and order upon the chaos of ruins resulting from the long unbridled sway of lawlessness, injustice and disorder, was a task which was almost too great for the indomitable courage, perseverance and rectitude of even the Anglo-Saxon race, and the way in which the glorious result was finally achieved is one of the proudest triumphs of administrative genius of which our countrymen can boast.* Not but that our first beginnings

* The condition of the administration from 1772 to 1774 is thus described by Hastings in a letter to Barwell:—"The new Government of the Company consists of a confused mass of undigested materials as wild as chaos itself. The powers of government are ill-defined: the collection of the revenue, the provision of the investment; the administration of Justice (if it exists at all), the

were marked by blunders, and worse than blunders. For it is no doubt true, as Macaulay has remarked (though his strictures on Hastings and Impey are, for the most part, cruelly unjust), that at first English power came among the people of Bengal unaccompanied by English morality, and that the national character was disgraced by excesses resembling those of Verres and Pizarro. That was in the early days of our advent, when needy adventurers flocked to India, and returned with full purses to purchase manors, to build stately dwellings, to marry the daughters of peers, and to give balls in St. James's Square. It was a period of general corruption, which made a man so little given to theatrical display as Clive, pay the "tribute of tears to the departed and lost fame of the British nation." But, returning to India for the third time in 1765, the hero of Plassey determined, with a mind superior to all corruption, "to destroy the great and growing evils that existed in the British administration, or to perish in the attempt," and within the short space of two years he succeeded in introducing many and important reforms. In the beginning of 1767 he left for ever a country which was the scene of one of the most brilliant careers that History has had to record, and with which his name will be imperishably connected.

care of the police, are all huddled together, being exercised by the same hands, though, most frequently, the two latter offices are totally neglected for the want of knowing where to have recourse for them."—Gleig's *Life of Hastings*, I., 317. It was Hastings' boast at a later period (1791) that what the valour of others acquired he enlarged, and that he gave shape and consistency to the dominion which we held in India. And then, with the proud consciousness of a man who had done his duty, he added these words of bitter reproach: "I gave you all, and you have rewarded me with confiscation, disgrace, and a life of impeachment."—(*Hist. of the Trial*, IV., 97-104). It is gratifying to think that the memory of such a man has been recently vindicated against the foul aspersions which the eloquent pen of Macaulay had bequeathed to posterity in connection with the part he took in the trial of the scoundrel Nuncomar, and that by one who, of all others, was best able to do justice to his subject.—(See Sir J. F. Stephen's *Nuncomar and Impey*, 1885.)

The noble work of reform that he had inaugurated continued to make steady progress under his successors, and the English rulers who came after him recognised the great principle, so well expressed by Macaulay, that "the greatest advantage which a government can possess is to be the one trustworthy government in the midst of governments which nobody can trust." In 1769 Supervisors were appointed, to superintend the native officers employed throughout the country in collecting the revenue and administering Justice. In the Letter of Instructions defining their duties and laying down the principles by which they were to be guided, views of a broad and statesmanlike character are expressed in language worthy of a conquering and upright race, whose mission was to regenerate the East. Among the chief effects, the Supervisor was told, which were to be hoped from his residence in the province to which he was deputed and which ought to employ and never wander from his attention, were to convince the *raiyat* that he would stand between him and the hand of oppression; that he would be his refuge and the redressor of his wrongs; that the calamities which he had already suffered had sprung from an intermediate cause, and were neither known to nor permitted by the British Government; that honest and direct application to him (the Supervisor) would never fail of producing speedy and equitable decisions; that after supplying the legal due of government, he might be secure in the enjoyment of the remainder; and finally, to teach the *raiyat* veneration and affection for the humane maxims of our Government. And then, after recounting the various duties that should engage the special attention of the Supervisor in his dealings with the *raiyats* and *zemindars*, the Letter concludes with this magnificent summary of what was required of him:—"Your commission," it says, "entrusts you with the superintendence and

charge of a province, whose rise and fall must considerably affect the public welfare of the whole. The exploring and eradicating numberless oppressions, which are as grievous to the poor as they are injurious to the Government; *the displaying of those national principles of honour, faith, rectitude and humanity, which should ever characterise the name of an Englishman;* the impressing the lowest individual with these ideas, and raising the heart of the *raiyat* from oppression and despondency to security and joy, are the valuable benefits which must result to our nation from a prudent and wise behaviour on your part. Versed as you are in the language, depend on none, where you yourself can possibly hear and determine. Let access to you be easy, and be careful of the conduct of your dependents. Aim at no undue influence yourself, and check it in all others. A great share of integrity, disinterestedness, assiduity, and watchfulness is necessary, not only for your own guidance, but as an example to all others, for your activity and advice will be in vain, unless confirmed by example." We may, if we desire to cavil, marvel, at this distance of time, at the simplicity which could have supposed the successful performance of such manifold and difficult duties to lie within the compass of individual ability. But it is not too much to say that it was by faithfully acting up to the spirit of the above code of principles, by displaying, in fact, in the broad glare of every day life, those principles of honour, faith, rectitude, and humanity, that were held up in the Letter of Instructions as the proper distinguishing features of an English gentleman, that the Civil Servants of the East India Company eventually consolidated the Empire of Great Britain in the East, upon the firm and enduring basis of the affectionate loyalty of a contented and grateful people, whose trust and confidence they had won, and who saw in them the impartial redressors of their wrongs. Unhappily, however, the Supervisors were

not allowed sufficient time to carry out their excellent instructions, for their appointments were abolished in 1773, and the districts to which they had been attached were once more relegated to native officials. Indeed, there is abundant evidence to show that, for some reason or other, the Directors of the East India Company at this period discountenanced any attempt on the part of their servants in Bengal, nay, actually prohibited them from making any minute enquiries for the purpose of ascertaining the resources of the country. It was no doubt feared that enquiries of this description might arouse suspicion, and create discontent in the minds of the people over whom they had but recently acquired rights of sovereignty, and who had hitherto been accustomed to connect such enquiries with increased assessments and fresh exactions. The result was what might have been anticipated, that the Government of India was entirely working in the dark, effecting settlements of the land revenue upon no sound basis of calculation, and for a time actually striving to administer the business of the revenue through the medium of a Committee of Revenue at Calcutta, without the assistance of responsible and trustworthy local officers. We can form some estimate of the progress that had meanwhile been made, and of the fitness of the time for carrying out a permanent settlement of the country, from the candid declaration of Mr. Shore in 1782, that the real state of the districts was then less known and the revenues less understood than in 1774, or eight years previously. In 1786, Lord Cornwallis went out to assume the office of Governor-General of India, and brought with him explicit instructions from the Court of Directors, to carry out in the first instance a decennial settlement, which the Directors deluded themselves into the belief could be effected without any fresh scrutiny into the resources of the country. The object of this settlement was to enable the Directors "to form a conclusive and satisfactory opinion, so as to

preclude the necessity of further reference or *future change*," and, when made, it was accordingly announced to the zemindars that the assessment then fixed "*would be continued and remain unalterable for ever, if the Court of Directors approved of it.*" The requisite approval was accorded, not without certain misgivings of the wisdom of the step, which the strong counter-arguments of Mr. John Shore could hardly fail to create, but with the most magnanimous renunciation of all claim to any increase of their own demands, and with the declared intention of acting only as guardians and protectors of every class of persons living under their Government, and of establishing the credit and augmenting the general wealth and prosperity of the country. It was hoped that Lord Cornwallis, who had done so much to effect this result, would see no reason "to deny himself the happiness of announcing a new constitution to so many millions of the Asiatic subjects of Great Britain." This happiness His Excellency realised by the issue of a Proclamation on the 22nd March, 1793, putting the final seal to a measure which the experience of posterity has never ceased to condemn as a well-intentioned but monstrous blunder, and which, while depriving the Government itself of all participation in the progressive development of one of the main sources of the actual and latent wealth of the province of Bengal, contrived to confer all the advantages of future prosperity and the reclamation of the waste lands upon a single class of the community, namely the *zemindars*, who were to be henceforth treated as the real proprietors of the soil. When we remember that less than eighteen years after this announcement of a "new constitution" it was found that the difference between the amount collected by the *zemindars* from the cultivators and the amount paid to Government had trebled, and that, since then, the increase of the former sum has been advancing by leaps and bounds, while the

latter has remained stationary, we can form some estimate of the sacrifice which the Court of Directors then made. And yet, foolish as this measure was, it is gratifying to an Englishman to recollect that the sacrifice—unselfish as it was princely—was made at a time when the Western sky was darkened by the clouds of Revolution and Anarchy, when the voice of reason was no longer heard in the Council Chamber, or that of Justice in the Courts of a Christian country, proud of its civilisation and of its glorious history:—At a time when the streets of Paris were red with blood, and when the whole Continent of Europe stood appalled at the terrible drama that was being enacted by an unbridled Revolution, beyond the Pyrenees, and when Russia, Austria, Prussia, Sardinia, and Naples were leaguing together in the cause not only of Monarchy, but of Humanity and Religion. It was at a time of such general tumult and disorder that England chose to show her subjects in the East a magnificent example of self-denial and generosity, and that she was engaged in prosecuting, quietly and unostentatiously, in all the serenity of self-conscious strength, those lofty aims of a civilised Government that have made her Empire in India a theme of admiration and wonder.

Looking back, therefore, at the past, and conceding a spirit of sincerity to the expressed motives by which the Directors declared themselves to be influenced, a sincerity proved by deeds and not merely by the well-rounded periods of a Despatch, we cannot in fairness refuse to acknowledge the justice of the encomium passed upon their magnanimity by the Marquis of Hastings in 1819. "Never," wrote His Excellency, "was there any measure conceived in a purer spirit of generous humanity and disinterested justice than the plan for the Permanent Settlement in the Lower Provinces. It was worthy of the soul of a Cornwallis." True. But the later historian of this measure will at the

same time be compelled to add, in language that admits of no doubt, that it was a piece of generosity at once misconceived and altogether ill-timed, and a piece of "disinterested justice" that was almost criminal in its extravagance, while it was misplaced in the direction which it took. As Lord Hastings continues: "This truly benevolent purpose, fashioned with great care and deliberation, ... subjected almost the whole of the lower classes throughout these provinces to most grievous oppression—an oppression, too, so guaranteed by our pledge that we are unable to relieve the sufferers"! Such was the experience that a quarter of a century had alone sufficed to furnish of the effects of the legislation of 1793! Lord Cornwallis in India, and the Court of Directors at home, made in fact the double error of first basing the assessment upon the actual produce of lands *then* in cultivation, and not upon the possible productive power of the whole area of land, and this, too, at a time when the resources of the country were all but undeveloped; and secondly, of assigning to the *zemindar* the right, as proprietor, of collecting a share of the whole produce of the land, subject only to a fixed annual contribution to the Government, without in any way defining the rights of those who cultivated the soil, or limiting the demand of the *zemindar* upon the cultivator, beyond a vague expression of *trust* that "the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever . . . . would conduct themselves with good faith and moderation towards their dependent *talukdars* and *raiyats*." A still further error was committed by another Regulation of the same year (XLIV. of 1793) restricting the right of a proprietor to grant a farm or lease of any lands for a term exceeding ten years. The reason of this subsequent enactment was, as recited in its Preamble, that it was apprehended that many proprietors, either from improvidence, ignorance, or with a

view to raise money, or from other causes or motives, might be induced to create dependent *taluks* at a reduced and inadequate rent, or to let lands in farm, or grant *pattas* for the cultivation of land at a reduced rent for a long term, or in perpetuity—that such engagements, if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors to impoverish their heirs, promote vice and injustice, and occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue reserved being insufficient for the discharge of the public demand upon their estates. Now it may be conceded that the evil contemplated by this Regulation, and intended to be averted by it, was not an altogether chimerical one. But, as was pointed out in a Despatch of the Indian Government in 1815, the evil might have been guarded against by the much simpler device of prohibiting a grant of a *patta* at a rate of rent inferior to ordinary rates for similar land in the same *pargana*, without interfering in a very arbitrary manner with the exercise of the landlord's discretion in forming engagements with his tenants. The restriction was, however, afterwards annulled by Regulation V. of 1812, and if, in this particular matter, the *Patta* Regulations in the first instance pressed hardly upon the proprietor, the general effect of the legislation between 1793 and 1799, culminating with Regulation VII. of 1799, was to place the *raiyat* bound hand and foot at the mercy of the landlord, who possessed summary powers of distraint and ejectment, to which the tenant had either to submit, on the proprietor's own terms, or to ruin himself in a vain attempt to challenge those powers through the medium of a Court of Justice. Writing in 1815, Lord Moira remarked with caustic terseness, that "if it were the intention of our Regulations to deprive every class but the large proprietors, who engaged with Government, of any share in the profits of the land, that effect has been fully accomplished in

Bengal." And in the following year, Mr. H. Colebrooke gives his experience of twenty years of the working of the past legislation, in terms of even stronger condemnation. "Rules," he writes, "devised for the safety of the public revenue have introduced a needless insecurity in the engagements and tenures of the *zemindars* and *raiyats*; . . . . the provisions of Regulations intended to give protection to the rights of subordinate landholders and permanent tenants and occupants of the soil, have been ineffectual for the defence of their privileges against the encroachment of superior *zemindars*, and many of the rules designed for their protection have been perverted into engines of their destruction. Rules that have been contrived to preclude and obviate abuses which formerly prevailed, and have been guarded by penalties, became instruments in the hands of dishonest persons to vitiate their engagements and defraud the persons with whom they have dealings."

But, unfortunate in its conception and deplorable in its results as the course of legislation had hitherto proved, the main cause of all the previous failure was that the facts of the situation were never accurately understood. Despite the statement to the contrary, to which allusion has already been made, both the Supreme Government in India and the Court of Directors at home acted on certain general principles, or abstract theories, which were deemed to be capable of universal application, but which a bitter experience proved were wholly unsuited to the condition of the country to which they were then applied. Mr. H. Colebrooke hit the nail on the head when he said, "we have found, in too many instances, how ill-suited intricate arrangements and regulations are to the manners and capacities of the people of this country, to enter willingly on a new career of complex legislation,"—a very necessary caution, which, if it had always been faithfully observed,

would have saved the Indian Statute Book much cumbrous matter, the Government considerable labour, and the people no small irritation. At the same time, candour requires us to admit that the good intention of the authorities, both in England and in India, is beyond question. Their measures were, no doubt, often mistaken, but were certainly meant for the amelioration of the country, and the stability of law and order. The Directors, in 1821, mournfully asserted as much, and declared their readiness to retrace their steps, consistently with the maintenance of the general principle of a permanent settlement, which, of course, was irrevocable, if it were necessary to do so to protect the *raiyats* in the enjoyment of their just rights. Indeed, we need to go no further than the solemn declaration which was attached by the Directors to their original sanction of a Permanent Settlement for Bengal to prove that a protecting power was still reserved for the benefit of the *raiyat.* "We wish to have it distinctly understood," are the words they used on the occasion, "that while we confirm to the landholders the possession of the districts which they now hold, and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the *raiyats*, or the sums paid by them with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us as Sovereigns of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the *raiyats* being improperly disturbed in their possession, or loaded with unwarrantable exactions." And, in the same sense, the Proclamation of the 22nd March, 1793, announcing the Permanent Settlement, contained the following important reservation of future action. "It being the duty of the ruling power to protect all classes of people, and more particularly those who, from their situation, are most helpless, the Governor-General in

Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent *talukdars*, *raiyats*, and other cultivators of the soil; and no *zemindar*, independent *talukdar* or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay." Nor, seeing that the Government of the day had at this time expressly omitted to define the rights of the *raiyats*, in the delusive hope that such a matter might be best settled by private contract between the *zemindars* and the *raiyats*, could the safeguard of such a reservation have been equitably excluded. It is, however, fortunate for posterity that the doors of future legislation were not completely barred against the tenant. For the latter, as we have seen, was still further prejudiced by various enactments passed in 1799 and 1812, and by others again in 1819 (Act VIII.), and 1845 (Act I., re-enacting XII. of 1841), which all tended to improve the status of the landowner, and rendered the tenant's position one of mere sufferance on the good will and pleasure of the *zemindar*. A ray of sunshine, it is true, brightened the tenant's future in 1859, and an Act passed in that year went some length towards ameliorating his condition and repressing the exactions of his landlord. But, as will be explained in my next Paper, the Act did not go far enough, and thus, evils that had long been felt to exist, were permitted to survive until a more comprehensive piece of legislation could be taken in hand. Opinions will, no doubt, continue to be divided on the question whether the Act recently passed in India (known as the Bengal Tenancy Act) fulfils in a proper sense the promise that was held out in 1793. But no candid enquirer who has acquainted himself with the history of the past, who has read the abundant evidence which published records supply of the cruel and arbitrary treatment of the *raiyats* by their more powerful fellow-countrymen, upon whom or upon

whose ancestors, the East India Company, in a fit of generosity, without any thorough investigation of their rights, conferred the proprietorship of the soil: no impartial student, I believe, who has mastered the details of the question, will deny that the time had certainly arrived when an unredeemed promise required to be fulfilled, and when the strong protective arm of Legislation was imperatively called for, to secure the weak in the enjoyment of their rights, free from exaction and the dictation of their lords.

W. H. RATTIGAN.

II.—THE WELSH ELEMENT IN ENGLISH LAW.

SIDE by side with the Pagan or semi-Pagan Saxon and Danish Kingdoms in England, existed the Christian principalities of Wales, carrying on, though no doubt in a rude fashion, the traditions of Christianity and Roman Law.* The Cumbrians possibly preserved more of the Roman civilisation, but the Cambrians must have been in this respect the superiors of the invaders, for at least some centuries after the confinement of the British rule to the West and North. The conquest of Wales, though complete, was very gradual, and was perhaps rather in the nature of a political absorption. The Welsh princes, feudally subject to England,† were otherwise practically independent till the death of Llewelyn.

* "This superiority of the Romanised Britons" (*i.e.*, in the jury system), "in the principality is a remarkable proof of the vitality of the Roman Laws and Constitution."—Note by Mr. Finlason, Reeves' *Hist. of Eng. Law*, Vol. II., p. 15.

† Matthew Paris, p. 696, calls the Prince of Wales *vassalulus* of the English Crown.

Wales was not part of the Realm of England till 1536,* and was not divided into the present counties till 1543,† although possibly Pembroke and Glamorgan were called counties even before the Statute of Rhuddlan. It preserved a separate judicature until 1837.‡ A consideration of these facts shows that the Cymric polity was not at once overlaid by the Teutonic, as were the French local customs by the Code Napoléon, but that Cymric institutions were, in all probability, allowed time to develop to a great extent in their natural course.

The proof of Cymric influence in England from a comparison of legal and political institutions still remains to be worked out.§ The philological and ethnological influences have been dealt with, but much still remains to be done on the lines which the present writer, if he does nothing further, may at least serve to point out. Celtic remains in the English language are very considerable in local names, they also exist to a certain extent in the names of things, chiefly words of the commonest domestic use, part of the home life of the people. The Civil and Ecclesiastical institutions of the Welsh, founded as they were upon a higher Civilisation, may not unfairly be

* 27 Hen. VIII., c. 26.

† 34 and 35 Hen. VIII., c. 26.

‡ 1 Will. IV., c. 70.

§ Ch. vi. of Mr. F. Seebohm's *English Village Community* is a valuable contribution to such a task.

‖ Such as flannel, tub, crock, &c.

[This fact was long since pointed out by the late Rev. Richard Garnett, *Linguistic Essays*, also by Dr. Vaughan, *Revolutions of English History*, who held that the Celtic influence in the English language was larger than is generally supposed. To the same effect are the arguments of Mr. James Kennedy, LL.B., in his *Ethnological and Linguistic Essays*, 1861. It was acknowledged by the late Professor Taswell-Langmead, *English Constitutional History*, Second Ed., 1880, but turned to the disadvantage of the Celtic element as proved thereby to be a subject element, which, however, was not in dispute.—Ed.]

supposed to have had still greater influence. It would scarcely be going too far, it is submitted, to suppose that the survival of any part of the Roman Law in Britain is due to Wales, and that through Welsh channels originally flowed the stream of Roman Law which, gaining strength in Glanvill, appears in full vigour in Bracton.*

In dealing with matters which present points of likeness in England and Wales, it is not always safe to infer that the one must have copied the other. Thus the village community of England and the *commote* of Wales probably developed independently from an older common origin, the village community being apparently a characteristic of the greater part of the Aryan race. On the other hand, the hundred and the *cantref* may have been conscious imitations the one of the other, for the hundred must be much later in time than the simple village community.† The system of imposing fines for crime, common to both the Welsh and the English Laws before the Norman Conquest, is another example of a matter which is common ground in all bodies of Law at a certain stage.

The chief points in which the Welsh affected English Law, whether public or private, to any considerable extent may, subject to what has been already said as to similarity not always being evidence of direct influence, be classed under four heads—the Crown, the Church, the tenure and descent of land, and the judicial procedure.

* The *Leges Barbarorum*, as Savigny shows, contained a large substructure of Roman Law; I do not wish to deny their possible influence, but only to show that they were not the only source of the existing Roman Law in England.

† Giraldus says the *cantref* contained one hundred *villæ*, but this may be merely the point of view of one who was partly a foreigner. The *villa*, or vill, was the village community as it existed in historic times in England, and one theory of the hundred is that it contained a hundred vills.

The Crown. It is easy to see in the sketch of the King or Prince in the ancient Laws of Wales a primitive monarch of great authority. He possesses privileges strikingly like some of those still possessed by the English Crown. Thus he is supreme judge, and sits in person on the trial of a claim to land.* The judges of the Supreme Court sat with the King.† In England all pleas in the Queen's Bench were formerly *coram rege ipso*, and even as late as the reign of James I., an English King sat in the Queen's Bench. The Welsh King had a right to treasure trove, to royal fish, and to waifs and strays,‡ all still part of the prerogative of the Crown of the United Kingdom. On the other hand, his authority was limited by the power of the Church and the people, the Church appearing to be at one time, as it was in England and Italy, the most formidable opponent of the Crown. The palace and its officers are the subjects of minute and special legislation, the provisions of the Codes on this subject being apparently considered so important that they take the first place. The King cannot lead forth the host except once a year.§ This is a more limited prerogative than that of the English feudal monarch who was restricted to a service in the field on the part of his vassals for forty days at a time. For a longer campaign he must make special agreements, or use mercenaries. The Welsh King acted by the advice of a Council of the magnates, lay and clerical, of the realm, as the prefaces of all the Codes show, but he had not to contend with a powerful feudal nobility, as in England. The *Cymru* were all co-equal in privilege.|| This important principle is perhaps attributable to the influence of Roman Law. It is laid down by Ulpian, *quod ad jus naturale attinet, omnes homines æquales sunt.*¶ Wales exhibits the adoption of this principle without the qualification as to Natural Law. It was of

* Dimetian Code, ii. 20; Venedotian Code, ii. 11.
† Dim. ii., 8, 10.
‡ Dim. ii., 23; Welsh Laws, v., 2, 10.
§ Ven. i., 43, 15.
|| Ven. xiii., 2, 64.
¶ *Dig.*, 50, 17 32.

much slower growth in Norman and Plantagenet England, in spite of the noble declaration in favour of freedom which the Norman Kings might have found in the Laws of Ethelred, "be it jealously guarded against that those souls perish not for whom Christ died."* In one case the King had a privilege unknown in England, for when a bishop died, his land belonged to the King.† The nearest approach to this in England was the custody of the temporalities during the vacancy of the see, a right which under some monarchs was practically co-extensive with the Welsh right, for we know that William Rufus forced each new bishop to purchase from him the temporalities of his predecessor. On the whole, it is not unfair to suppose that Constitutional Monarchy is a plant of older growth in Wales than in Norman England.

The Church. The Welsh Church always preserved a position of comparative independence towards the Roman See.‡ The same position was on the whole maintained by the English Church. The first Statute of Provisors existed more than two centuries before the Acts of the 24th and 25th years of Henry VIII. prohibited appeals to Rome.§ The example of ecclesiastical independence set by Wales perhaps served to confirm the English Church in the position which it took up. The Church Laws of Wales followed for the most part the later Roman Law, upon which the Canon Law was based. The ecclesiastic was to be sued only in

* Bk. v., c. 2. † Ven. ii., 14.

‡ Pryce, *Hist. of the British Church*, p. 94. On the other hand it is contended by some that the evidence for the existence of Christianity in Britain before Constantine is vague, and that after that time the Church was probably rather the Church of the governing class than of the people. (Christianity in Roman Britain, by H. H. Howorth, *Trans. R. Hist. Soc.*, 1884.) [Even if the language of Tertullian and Origen be set aside, the appearance of British Bishops at the Council of Arles, A.D. 314, implies a settled Church at least in the previous century. Haddan and Stubbs have collected early notices, *Counc. and Ecc. Doc.*, Vol. I.—Ed.]

§ 24 Hen. VIII., c. 12; 25 Hen. VIII., cc. 19, 21.

his own Court.* It is unnecessary to do more than mention the history of the disputed jurisdiction of the Ecclesiastical Courts in England, a history in which the Constitutions of Clarendon form the most conspicuous landmark; it is sufficient to say that even at the present day the Ecclesiastical Courts in England, though they have long lost their authority over non-ecclesiastical causes, still preserve it as separate tribunals in matters of a purely ecclesiastical nature. The Church enjoyed a special amount of consideration in Wales, a fact which appears to have given great satisfaction to Giraldus. "Nothing is to be done in opposition to the law of the Church," says the preface to the Welsh Laws, a long time before a similar provision appeared in Magna Carta.† The Ecclesiastical Judge might hear a case, but could not pronounce sentence.‡ This is an early assertion of what was not formally acknowledged in England, with regard to the votes of Bishops, until the Resolution of the House of Lords in the Earl of Danby's case, 1679.§ The "benefit of clergy," as it was called in English Law,—where it was not finally abolished until 1827,—‖ existed in full vigour in Wales. In the case of theft, though the clerical thief could not be punished, his goods were forfeited.¶ Marriage of priests seems to have been connived at, as in England, though contrary to Ecclesiastical Law. It is one of the things that corrupt the world, say the Welsh Laws.** Giraldus makes a ponderous ecclesiastical pun upon the subject.†† The

* Dim. ii., 8, 30, the Welsh equivalent of the provisions of Justinian, *Cod.* i., 4, 7.

† Sec. 1.

‡ Dim. ii., 8, 32; Welsh Laws, x., 5, 6.

§ 2 Hallam's *Const. Hist.*, c. xii.

‖ 7 & 8 Geo. IV., c. 28.

¶ Welsh Laws, xiv., 25.

** *Ibid.* x., 9.

†† Non ergo libris intendunt sed liberis, non foliis sed filiis. *De Jure Menevens. Eccl.*, p. 611.

[Marriage of the clergy can only have been contrary to the *later* Ecclesiastical Law in Wales, for it was clearly the original and common practice of all the Celtic Churches, whether in Britain, Ireland, or Scotland, side by side, of

Christian principalities in Wales may have served as models to their English neighbours in matters relating to the Church. Christianity was older in Wales than in England; the advantages of experience were all on the side of Wales, and it is perhaps safer in this than in some other things to suppose that there may have been an intentional imitation of the Welsh by the English Church.

Land Tenure. Co-tillage was regarded as of the first importance.* In fact, this and a common judicature are two of the conditions precedent to the existence of a State.† Every wild and waste, say the Welsh Laws, belongs to the country and kindred in common, and no one has a right to exclusive possession of so much or little of land of that kind. It was much in the same position as the Teutonic "common mark." ‡ With regard to this point, it is probable, as has been said, that the Celtic and Teutonic races developed the usage from a common origin.§ But it is instructive to mark that English Law is at last beginning to acknowledge the historical truth of what was laid down so long ago in the Welsh Laws, and to see that possibly the tenants of the manor were the original possessors of the soil, and not the lord of the manor.‖

course, with their tribal monasticism. There is abundant charter evidence of the continuance of the practice to a late date, in all the more specially Celtic portions of the Western Church, but the Teutonic portions were apparently not alien in sentiment from the Celtic on this point, and there were traditions in favour of clerical liberty in some of the most illustrious Continental Churches, such as that of Milan.—Ed.]

* Mr. Seebohm derives the open field system in England directly from Wales. See as to this an article by Mr. B. C. Skottowe, M.A., *Law Magazine and Review*, No. CCLII., for May, 1882.

† Welsh Laws, xiii., 2, 46.

‡ *Ibid.* xiii., 2, 101. Cf. Williams, *Real Property*, App. (C)

§ It is interesting to notice that in some cases English and Welsh customs exist simultaneously, as in the Manor of Westwode in Gloucestershire. Seebohm, *Eng. Vill. Com.*, p. 211.

‖ See Williams, *Rights of Common*, p. 39.

At the time of the Statute of Rhuddlan, the tenures of England and Wales had diverged widely. England was *primâ facie* feudal, Wales *primâ facie* allodial. It may be that the allodial tenure of the adjoining kingdom had some effect in prolonging the existence of pre-feudal customs in England. Imperfect copyholds and personal villenage were found chiefly in what may be called the British parts of England.* Thus many customs in manors would be directly descended from the ancient British tenure, if such a feudal term as tenure may be allowed, for convenience, to denote a pre-feudal mode of holding property in land. With regard to descent of land, the older law of most races appears to have been that while the eldest son had an official preference, as representing the continuity of the family, the youngest son had the substantial benefit of the homestead. The next period was the period of gavelkind, or descent in equal parts, to which succeeded, in countries affected by feudal conceptions, primogeniture, or the right of the eldest son, more or less affected by the power of testamentary disposition. In the Welsh Laws the first two stages appear, viz., the right of the youngest (known as Borough-English in England), and gavelkind, the primogeniture stage not being imposed till the Statute of Rhuddlan.† The homestead, eight acres of land, and the best implements of the house were to go to the youngest son.‡ The custom of Borough-English, which there is some ground for assuming, as has been already said, to be the direct historical representative of the Welsh custom, still exists in some manors in Sussex, and in the soke of Southwell in Nottinghamshire. It is remarkable that it is not known to

* Pollock, *Land Laws*, note C. That is, in the South and West, rather than in the North and East.

† It was reimposed, and gavelkind expressly abolished, by 34 & 35 Hen. VIII., c. 26.

‡ Dim. ii., 23 Ven. ii., 12, 16.

exist in any Welsh manor. In later times, as might have been expected, gavelkind tended to supersede the earlier custom, and is the only custom mentioned in 27 Hen. VIII., c. 26, by which it is preserved where it can be shown to be ancient.* Gavelkind is still of importance in many manors in England, and of special importance in the county of Kent, where lands are presumed to descend in gavelkind until the contrary be shown. According to Welsh Law, each son, as he came of age, seems to have been entitled to his due allotment of the family estate. At a later period, the partition did not take place till the death of the head of the family, therein agreeing with the present English Law. This partition is one of the causes to which Giraldus attributes the decay of the nation.† Wales had no law of dower until the Statute of Rhuddlan.

Judicial Procedure. The survival of Roman Law is more noticeable in Wales than it was in England, until what has been called "the Romanising pedantry" of Glanvill and Bracton imported into England what were, to a large extent, the principles of an alien Jurisprudence. The Judge was punishable for wrong judgment,‡ as was the Roman *judex qui litem suam fecit.* The English attaint of jurors was very probably suggested by the analogy of the Roman-Welsh Law on this point. The *cautio judicio sisti* of Roman Law was exactly paralleled by the surety to abide the law of the Welsh Laws.§ In England the same result was obtained by the oath of the party. A woman could not be surety in either Roman or Welsh law.‖ The number of witnesses must be two where no number is specified.¶

* S. 35. Silas Taylor in his History of Gavelkind (1663) derives both the name and the custom directly from the Welsh.

† *Itinerary*, pt. ii., ch. x.

‡ Dim. ii., 8, 12; Ven. iii., Pref.

§ Welsh Laws, iv., 4, 10.

‖ Ven. ii., 1, 56.

¶ Dim. ii., 4, 5 (almost the only place where any of the Welsh Codes specifically cites Roman Law).

English Law follows this only in the case of treason and perjury. The system of pleading did not depend, as in England, upon an original writ, but began simply with a statement of claim without reference to a writ.* English Law does not seem to have reached this stage until, perhaps, the 15th or 16th century.† Other rules of evidence still existing in England find their prototypes in Wales. Thus hearsay evidence is admissible in pedigree cases, if self-disserving (to use a convenient term of Bentham), inadmissible if self-serving.‡ Laws become obsolete by change of circumstances.§ This is contrary to the *theory* of English Law, but it is nevertheless beginning to be recognised as necessary in *practice*, though theory may reject it. "Though the principles of Law remain unchanged," said Lord Coleridge, L.C.J., in a recent case, "yet their application is to be changed with the changing circumstances of the times."|| It is interesting to note the dawn of Equity. One of the three things that overcome Law is that which is done by the King to pursue truth and justice, and for the sake of justice and mercy.¶ This was long before the rise of English Equity. Welsh Law knew before English Law the division into King's Courts and Local Courts,** corresponding to the *Curia Regis* and the County Courts of England. The system of itinerant Judges †† anticipated the justices in eyre introduced in England by Henry II. In some cases the Judges consult in private

* Welsh Laws, Bk. xii. (precedents of claims).

† See Reeves' *Hist. of Eng. Law*, Vol. II., ch. xxiii.

‡ Welsh Laws, x., 11, 8.

§ *Ibid.*, xiii., 2, 180; Cf. *Inst.*, i., 2, 11.

|| *The Queen* v. *Ramsay* (separately published, 1883). The progressive character of English Equity is acknowledged by Sir George Jessel in *Re Hallett's Estate*, 13 Ch. D. 710.

¶ Welsh Laws, xiii., 2, 185.

** Welsh Laws, xi., 5.

†† *Ibid.*, xiii., 1, 2, 3.

and report to the King,* as is now done by the Judicial Committee of the Privy Council.

A more extended notice of Distress and Trial by Jury may be found interesting. In the Welsh Law, as it has come down to us, distress, as a method of process, could only be levied by judicial sanction.† At first distress was probably extra-judicial, and simply represented the taking of the law into his own hands by a person aggrieved, at a time when the Executive was too weak to afford him an adequate remedy. The Irish *Senchus Môr* appears to represent this stage and the transition to the next, or the judicial distress, which Wales had reached at the time of the Welsh Codes. Traces of this stage are found in England in the Anglo-Norman period, as in the customs of Newcastle-upon-Tyne in the reign of Henry I.‡ and the charter of Richard I. to Lincoln.§ At a later date distress, in some countries judicial, in others, as in England, the act of the party without the intervention of the Court, shrinks to comparatively small proportions, and is no longer the universal remedy. In England, at the present day, it exists only for rent and *damage feasant*.

The law of distress perhaps developed independently in the two countries. But in the case of the jury it is not unfair to suppose that the English system was directly affected by Wales. It is even probable that John of Salisbury and Henry II. may have modelled their reforms of the jury system upon a system existing in a country where that King had more than once been in person, not always to his advantage. The Celtic element in the English jury seems to have been to a great extent overlooked by legal and constitutional writers. Mr. Forsyth || looks only to the Scandinavian and Romano-Norman Elements. As far as language is a test, it is true that the Scandinavian

* Dim. i., 14, 20. † Dim. ii., 5. ‡ Stubbs, *Select Charters*, p. 107.
§ *Ibid.* p. 259. || *History of Trial by Jury*.

language has left more traces in England than the Welsh, but it should be remembered at the same time that, as has been already said, some of the words of the commonest domestic use are Welsh. The Scandinavian influence was perhaps more marked, the Welsh earlier in time. The early juror, in England and Wales alike, was in the nature of a witness or of a compurgator rather than of a juror in the modern sense. Ancient Law chose him because he knew all about the matter at issue; Modern Law chooses him because, from his ignorance of the matter, his verdict will be more unbiassed. In the assize of English Law the jurors were witnesses, in actions of debt or criminal proceedings they were compurgators. In Wales both kinds existed before they were known in England; if it be permissible, as no doubt it is, to consider the Welsh Codes as reductions into writing of what had existed as unwritten Law long before the date of such reduction. In a claim to land in Wales, instead of the barbarous trial by battle followed proof by witnesses.* This was not the case in England until the reign of Henry II. The system of compurgation is governed by many rules in the Welsh Laws, where it is evidently an institution of great antiquity. The number of compurgators varied in criminal charges. Thus theft was to be denied by twelve, murder or public assault by fifty.† The number twelve in England may have been finally fixed as much by Celtic as by Scandinavian analogy, though the latter is the more generally accepted theory. In civil actions the number was twelve; "God and twelve to the defendant's having done so," is the conclusion of more than one precedent of a plaintiff's claim.‡ After the conquest of Wales by Edward I., it is interesting to notice that the

* Ven. ii., 11. The Roman rule of evidence, *Semper præsumitur pro negante*, adopted in English Law, appears very strongly in this paragraph.

† Dim. ii., 1; 3, 25.

‡ Dim. xii., 14, 15.

Welsh petitioned for the preservation of their system of jury trial. This petition was granted, except in the case of the graver crimes, such as murder, arson, and theft,* probably because these crimes, being technically "pleas of the Crown," were to be tried by a uniform procedure throughout the kingdom.

A deeper research among the Welsh Laws than the present writer has as yet been able to make, would, he believes, only confirm what has been already advanced. The Celtic origin of many of our institutions is not only possible, but probable. Putting aside resemblances which may be merely fortuitous, or may proceed from a common origin, enough remains to prove the extensive influence of the Welsh upon their neighbours. It seems evident that the influence has, as a general rule, been in the right direction. To choose but a few matters of special interest, the limitations of Royal authority, the allodial tenure, the use of a reasonable means of trial instead of the judicial battle, are scarcely to be passed by as institutions of a semi-barbarous people governed by savage chieftains. The Welsh must have had at least sufficient intelligence to appreciate some of the best features of the Roman system, and sufficient force of character to transmit them in a more or less complete form to their conquerors. It will not be the first time in the History of Nations that the stronger owes a social debt to the weaker.

Græcia capta ferum victorem cepit, et artes
Intulit agresti Latio.

JAMES WILLIAMS.

* Reeves, *Hist. of Eng. Law*, Vol. II., p. 15.

III.—LAND TRANSFER AND REGISTRATION OF TITLE IN ENGLAND.

A RECENT article by the Duke of Marlborough on the subject of "The Transfer of Land" in the *Fortnightly Review* (for April, 1885), has aroused considerable interest at the present time, as was but natural, more especially as some of the writer's views and statements are undoubtedly well deserving of attention. At the same time I think that, to a certain extent, the Duke has unintentionally laid any blame which may attach in respect of the present system where no such blame should be placed, and has also underestimated the improvements and modifications in such system, which have taken place within the last thirty or forty years.

That the Law of Real Property has been, and still is, complicated and full of technicalities—and in some degree unnecessarily so—is certainly to be regretted; but this arises partly from the very nature of the property itself, and the immense variety and multiplicity of dealing therewith, of which such property is capable. Moreover, it should be borne in mind that from the very earliest times land has been considered in a much more sacred and important light than personalty, and many of the difficulties connected with the subject are to be traced to the desire of owners themselves, and to the growth of the custom of centuries.

If we could at one blow do away with the system of Entail and Settlement, and establish a very limited ownership in land, and also establish an undeviating rule for the value of land, then we might be able to place land on a like footing to the funds, and make the mode of Transfer in the one case as simple as in the other. This is, however, and justly so, an utter impossibility.

On tracing back the history of Real Property, even during the Reigns of only Her present Majesty, and William IV., it will be seen that so far from the system of Land Transfer not having been the subject of improvement it has been the object of one continued series of improvements, and that quite as much with the concurrence and desire of members of the Legal Profession, as with that of holders of land themselves, and even more so. One Act alone of William IV. swept away all the anomalies and expense attaching to Fines and Recoveries, and the use of a Lease for a year—the Wills Act of Victoria placed Real and Personal Property on the same basis as regards the mode of devising—and various Acts of Lords Brougham, Cranworth, and St. Leonards, have constantly and surely worked from time to time other modifications. The Real Property Limitation Act of 1879 has further simplified matters with regard to the limit of time required to confer a possessory title.

This is, of course, only a very cursory notice of some of the principal Statutes passed with the object of effecting beneficial changes in the system, and I submit that it is by means of Acts of Parliament wisely and judiciously passed that defects can be most effectually cured—certainly not by sweeping and revolutionary measures, ill-considered probably, in their inception, and the consequences of which cannot be foreseen. It is by gradually pruning off known and admitted defects and deficiencies that a tree of such ancient growth as the System of Land Tenure and Transfer in England can with safety be strengthened; and it is a mistake to suppose that the curing of such defects and deficiencies is opposed by lawyers. On the contrary, whatever tends to facilitate the dealing with, and Transfer, of land, is in their interest, even looking at the matter from the lowest point of view.

If the expense attendant on the Conveyance of Land tends to narrow the market for land and prevents free

dealing in it, then, surely, anything which operates to do away with difficulties on these points is desirable; but is it really the fact that persons are prevented from purchasing land on the ground of the cost attaching to the Transfer? This I very much doubt. The difficulty at present felt in the disposal of Estates is not owing, I conceive, so much to the expense of Transfer as to the times. It may be doubted whether, in these days, anyone is ever deterred from purchasing on the ground of cost; and, further than this, the cost is, so far as Solicitors are concerned, generally exaggerated, as is also the supposed time occupied and delay caused in carrying out the Conveyance of Property. Besides this, any purchaser can, in calculating the price he gives, estimate the legal expenses he will be put to, and fix his purchase-money accordingly.

The responsibility attaching to Solicitors—even when, to a certain extent protected by Counsel's opinion, is, it is believed, under-rated; and, when such responsibility is considered, few persons, I believe, will deem that they are over-remunerated. Moreover, in estimating expenses, the half per cent. *ad valorem* stamp duty to Government on the purchase money is generally over-looked, and with this expense the legal practitioner has nothing to do. If this duty to Government were remitted or reduced, the expense of Transfer would be immensely abated.

To investigate a complicated Title requires great skill, labour, and trained and educated knowledge; and, in the event of any oversight or slip, may be attended with disastrous consequences to the Solicitor. Transferring a large estate is not like transferring a sum of stock in connection with which no difficulties can arise as to identity, or with reference to the proper exercise of powers, or any outstanding charges or incumbrances.

The Conveyancing and Law of Real Property Act, 1881, and Lord Cairns's Settled Land Act, 1882, and its Amending

Act, have, in fact, worked wonders in the direction of modifying the system of Transfer and free dealing with land. By the former Act the length of documents is reduced to a minimum, and by the latter every possible facility is given for selling land, and no one can say, since that Act was passed, that land can be so tied up as to be practically unsaleable at any time.

The remedy for all these evils is stated to be a Registration of Titles, and doubtless a system of Registration would to a certain extent be desirable; but then comes the question, what system? Registration, in a certain form, has been in practice in Middlesex since the reign of Queen Anne, and also in Yorkshire and a few other districts, and no doubt it has been attended with usefulness. At the same time this system has added very considerably to the expense connected with the Transfer of Property, and it cannot be said to have been any great safeguard, inasmuch as outside notice was effectual, and if outside notice of any Deed was received, it could not be superseded or give place in priority to a registered document. Certainly, by the Act of last Session, as regards Yorkshire for the future, any dealings with property will take effect in order and date of Registration, and Registration will be absolutely necessary; but against this amended system there is a considerable outcry, and perhaps not unnaturally so, as many transactions are necessarily rapid, and carried out for merely temporary purposes.

There is no doubt, in fact, that whatever may be said in favour of Registration, there is much to be said against its expediency, on the ground that it enables the Public (even if you hedge the Register round with any number of restrictions and rules limiting the rights of the parties to search), to pry into and obtain information as to the affairs of their friends and neighbours, and this, more especially in the country, would be attended with much unpleasantness, and

in many cases disaster. It may be said, if a man is in difficulties, why should his affairs not be known, and why should he obtain the benefit of a false credit? And some may further say what difficulty has arisen in Middlesex and Yorkshire through Registration? In reply, I would remark that there is no doubt Registration, more especially in the latter county, has been, in many cases, found objectionable, and as regards Middlesex, owing to the absence of Landed Estates, the objection has not been felt to such an extent as it would otherwise have been felt. It may well be doubted whether any real good is done to the community by disclosing people's affairs and financial position to the curious, and to a certain extent a compulsory registration would, I think, depreciate the value of property. If people like to give credit, as they must, on the strength of apparent social and pecuniary position, let them do so, and let those who give credit run a little risk which they can probably well afford to run, bearing in mind the profit they make.

The voluntary Registration of Title and Indefeasible Title Acts, passed some few years back, entirely failed, both on account of their costliness, and of the risk attaching thereto. In the case of large Building Estates, the Acts have certainly occasionally been used, in order to be able to state on sales that the Estate was "registered with an indefeasible title," which saved going into the prior title, and prevented expense in selling small plots. Besides, the statement looked attractive on Particulars of Sale. However, in ordinary cases, the Act could not be recommended, and moreover, on subsequent dealings with the property, it has been found that practically no expense has been saved, and in fact I am inclined to think the expense incurred was greater than ordinary. Then, again, although a title may, for all practical purposes, be perfectly good and marketable, still, the investigations made, before a Certificate of an Indefeasible Title can be obtained, are so minute,

and the advertisement and notices to adjoining owners and claimants so objectionable, that really what to all intents and purposes may be a perfectly good holding Title may be refused Registration, and once let a Title be refused, and known to be refused, it would naturally come to be supposed that there was some blot, and the value of the Estate would be lessened accordingly. Moreover, after a Landowner has gone to the great expense of obtaining a Certificate of Indefeasible Title, he would not, as a rule, get a penny more purchase-money on that account, and, in that case, he might just as well have saved himself the expense, worry and trouble.

The suggestion which I venture to submit with deference is that if any general system of Registration of Title be adopted, it should be formed somewhat on the principle of the Register of any Company established under the Companies Acts; namely, that there should be a registration of all dealings with, and owners of the *Legal* Estate in Land, and that all dealings with the *Equitable*, or, to speak more concisely, the Beneficial, Interests, shuold be kept off the Register. Thus, in the case of the Settlement of an Estate, the Register would only show the Transfer to the Trustees of the Settlement; but the Settlement itself, with all its complicated trusts and provisions, would be kept off the Register. The purchaser of the property would thus only have to deal with the Trustees, who would appear to be the absolute owners, and would not have to concern himself with the Settlement itself. This is, in effect, what is done, as far as practicable, at the present time, for the property (as a rule) is conveyed to the Trustees by a separate Deed from that setting out the trusts upon which they hold.

In order further to facilitate matters, it might be enacted that no purchaser, or person purchasing or otherwise dealing with property on the Register, should be bound to enquire as to any trusts upon which the property was held,

even with express notice thereof, and it might also be enacted that any person appearing on the Register to be the owner should have full powers to sell and deal with the property, and it might further be provided that the legal personal representative of any deceased owner (namely, his executor or administrator) should be the party placed on the Register as owner. Of course any breaches of trust committed by parties appearing to be owners, but who in reality were merely trustees for others, would be a question to be settled between them and the parties for whom they were trustees, and to whom they would still be responsible.

The above is, of course, a mere rough sketch of a scheme for Registration; but it appears to me to be a feasible one. At the same time, I am not without doubt whether even such a system would practically be of any material use, and am inclined to think that the present system of Transfer and Conveyance of Land—subject to modification in some respects—is more adapted to existing circumstances and to the requirements of the country.

REGINALD W. PEARLESS.

IV.—FOREIGN MARITIME LAWS.—II. ITALY.

THE Maritime Law of Italy consists of two parts: (I.) That contained in the Code of Commerce, which came into force on the 1st January, 1883, comprising Book II., and a portion of Book IV., of this Code, besides certain Temporary Provisions attached to it, and an Order for putting it into force; and (II.) The Mercantile Marine Code, which came into force on the 1st January, 1866, and was amended in 1877. In consequence of the Code having been so recently promulgated, it has been thought well to give this, which is believed to be the first English trans-

lation of it, at once; as under the alphabetical arrangement originally proposed, its publication would have been undesirably delayed.

The abbreviations used are the same as in the notes to the translation of the Belgian Code which has been published in previous numbers of the *Law Magazine and Review*, and a Table is given of the corresponding Arts. in the Commercial Code in force prior to 1883, and in the present Gode, to facilitate cross references from the Belgian Code, which was commenced before the present Italian Code came into force, and which, therefore, refer to the Arts. of the former Code. (See *Law Magazine and Review*, No. CCLIV. for November, 1884, p. 46.)

CORRESPONDING ARTICLES OF ITALIAN CODE OF COMMERCE IN FORCE BEFORE AND SINCE 1883.

FORMER.	PRESENT.	FORMER.	PRESENT.	FORMER.	PRESENT.
Book II. T. I.	Book II. T. I.	Book II. T. II.	Book IV. T. I.	Book II. T. IV.	Book II. T. II.
Art. 284	Art. 480	Art. 304	Art. 901	Art. 324	Art. 504
	T. IX., C. II.	305		325	505
	Art. 674	306	902	326	498
285	T. IX. 675	307		327	496
	T. I. 480		903		T. III.
286	T. IX. 677	308	B. II., T. IX.	328	545
287	T. I. 485		669		T. II.
	487	309	B. IV., T. I.	329	506
288	483		880	330	507
289	484	310	881	331	509
290	T. IX. 678	T. III.	B. II., T. I.	332	511
T. II.	B. IV., T. I.	311	491	333	512
291	879	312		334	513
292	883	313	494	335	514
293	884	314		336	515
294	885	315	495	337	
295	886	316	481	338	516
296	887	317	482	339	517
297	889	T. IV.	T. II.	340	518
298	890	318	496	341	520
299	891	319	498	342	
300	892	320	499	T. V.	T. III.
301	897	321	500	343	521
302	899		501	344	522
303	893	322	502	345	523
	896	323	503	346	525

Former.	Present.
Book II. T. V.	Book II. T. III.
Art. 347	Art. 526
348	524, 525
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350	527
351	529
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358	528
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369, 370, 371	540
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374	542
375	T. IX. 673, 675
376	T. III. 543
377	544
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T. VI.	T. IV.
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383	550
384	551
385, 386	552
387	553
388	T. IX. 671, 673, 675
	T. IV.
389	555
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Former.	Present.
Book II. T. VI.	Book II. T. IV.
Art. 394	Art. 561
395	563
396	564
397	562
398	565
399	566
400	567
401	568
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405	575
406	572
407	574
408	576
409	577
410, 411	578
412	579
413	580
414, 415	T. IX. 672
416, 417	T. IV. 581
418	582
419	583
420	584
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T. VII.	T. V.
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428, 429	592
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434	T. IX. 673, 675
435	T. V. 595
436	T. II. 507
437	T. IX. 675
438	T. V. 598
439, 440, 441	599
442	601
443	602
444	603

Former.	Present.
Book II. T. VII.	Book II. T. V.
Art. 445	Art. 599
T. VIII.	T. VI.
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494, 495	627

Former.	Present.	Former.	Present.	Former.	Present.
Book II. T. VIII.	Book II. T. VI.	Book. II. T. IX.	Book II. T. VII.	Book II. T. X.	Book II. T. VII.
Art. 496	Art. 640	Art. 516	Art. 660, 661, 662	Art. 530, 531, 532	Art. 651
497		517		533	652
498	636	518	625	534	671
499	641	T. X.		535	653
500	634	519, 520		T. XI.	
501, 502, 503	634, 635	521	657	536	T. IV. 554; T. VII. 659; T. VIII. 665
504, 505	641	522	658	537	665
T. IX.	T. VII.	523	655, 656	T. XII.	Book IV.
506, 507, 508	642	524	658	538	T. II. 918
509, 510	643, 644	525	647, 654, 655	539	Book II. T. VI. 637; Book IV. T. II. 924
511	647	526	656	540	920, 924
512	646	527	643, 648	541	924, 925, 926
513	647	528	649	542	916
514	646	529	650		
515	642				

ITALY: CODE OF COMMERCE, 1883. Book II. Title I.

Maritime Commerce and Navigation.

Ships and Shipowners.

Art. 480. Ships are chattels [*beni mobili*]. Boats, rigging, apparel, arms, stores, provisions, and every description of article pertaining to the vessel's permanent equipment are deemed to be parts of the vessel, even though they are temporarily separated from her.

Cf. B. 1, F. 190, S. 593, 615, H. 309, P. 1287, E. 4, N. 1, G. 443.

Macl. 1, 17; Maude & Pollock, 42. The *Dundee*, 1 Hagg. 109; *Gale* v. *Laurie*, 5 B. & C. 156.

481. Contracts for building vessels, and all alterations in, and revocations of, them, as also declarations and transfers of part-ownership of a ship whilst building, whether made by the person ordering the vessel, or by a shipbuilder who

is building a ship on his own account, ought to be in writing, and are invalid as against third parties if they are not copied into the Official Registers of the Marine Department where the vessel is built or her building is undertaken.

Cf. R. 779, 820, 821, P. 1233—1290, S. 585, 586, 588, 589, H. 309, G. 439, 440, B. 2.

Macl. Ch. I. *Ex pte. Lambton, in re Lindsay*, L.R. 10 Ch. App. 405. *Barr* v. *Cooper* (Sc.) 2 R. (H.L.) 14.

482. The person who orders a ship [*committente*] may withdraw from the contract either on the ground of the incapability of the shipbuilder to perform it or of his fraud.

With these exceptions the principle laid down in Art. 1,641 of the Civil Code applies.

The shipbuilder [*costruttore*] can only withdraw from the contract on the ground of accident or insuperable obstacle.

In case of the shipbuilder's decease, the contract is determined in accordance with Arts. 1,642 and 1,643 of the Civil Code.

NOTE.—Civ. Code, Art. 1,641. The person who gives an order may free himself, if he pleases, from its performance, even though the work has been commenced, by indemnifying the person who undertook it for all expenses, for all labour and for all profits he might have made out of the undertaking.

Civ. Code, Art. 1,642. A contract for personal service is dissolved by the death of the artisan, architect or (other) undertaker.

Civ. Code, Art. 1,643. But the hirer is bound to pay to the workman's heirs the proper proportion of the price agreed upon for the work done and for materials prepared, but only when these works and materials can be made use of by him.

483. Every alienation or transfer, whether in whole or in part, of the property in or use of a vessel, ought to be in writing, having regard to the regulations of Title IV. of this Book. If the alienation or transfer takes place within the realm, it may be effected either by a notarially certified deed [*atto pubblico*], or by a simple signed agreement [*scrittura privata*]; but it has no effect as to third parties unless it is copied into the official Maritime Register of the place where the ship is registered.

In foreign countries an alienation should be effected by a deed made in the Chancery of the Royal Consulate before the Consular Officer, and it has no effect as to third parties unless copied into the Consular Register. The Consul should transmit a proper official copy of the deed of alienation to the Maritime Office of the place where the ship is registered.

In all cases the alienation should be entered on the ship's register [*atto di nazionalità*], noting whether the vendor gives credit for the purchase money either in whole or in part.

The Superintendents [*amministratori*] of the Mercantile Marine and Consular Officers cannot receive or enter a deed of alienation unless the ship's register is presented, except in the case provided for in Art. 489.

In case of several alienations, their precedence is determined by the respective dates of inscription on the ship's register.

Cf. B. 2, F. 195, G. 439—442, S. 586, H. 309, 310, P. 1290—1292, E. 3, N. 4, R. 801—810.

M.S.A., 1854, §§ 55—57.

484. Consular officers in foreign countries cannot receive deeds of alienation of vessels, unless provision is made for the payment of, or security given for, privileged debts inscribed on the ship's register.

R. 811—817.

485. A contract of mortgage [*contratto di pegno*] on a ship or part of a ship, must be in writing.

A mortgage has no effect as to third parties, unless copied into the Official Maritime Register in the place where the vessel is registered, if made within the Realm, or into the Register of the Royal Consulate of the place where the vessel is at the time, if made in a foreign country. The Consul must at once transmit an official copy of the mortgage contract to the above-named Office.

In both cases the mortgage must be entered on the ship's register.

The Superintendents of the Mercantile Marine and Consular Officers in foreign countries cannot enter the mortgage deed unless the ship's register is produced to them, except in the cases provided for in Arts. 486 and 489. The entry of the mortgage on the ship's register must be noted on the copy of the deed of mortgage.

Cf. B. 135, 139, 142, F. 1874, 2, 6, 10.
M.S.A. 1854, §§ 66, 67, 69; Ros. 3, 83; News. 18, 19; M. and P. 55—57 Macl.

486. A mortgage on a ship in process of building has no effect as to third parties unless it is copied into the Official Maritime Register of the place where the vessel is being built. When, on the completion of the vessel, she obtains a register, mortgage deeds already on the register must be entered upon it.

Cf. B. 138, F. 1874, 5.
Ros. 84; M. and P. 19 (n) 54; *Ex pte. Hodgkin*, L.R. 20, Eq. 746.

487. A mortgage of a ship is effective without the necessity of nominating a guardian [*custode*] (*i.e.*, without taking possession).

488. If the mortgage deed is in proper form, its endorsement transfers the debt and all rights pertaining to it.

Cf. B. 144, F. 1874, 12.
M.S.A. 1854, § 73; News. 19; M. and P. 59.

489. If the alienation, transfer, or mortgage of a vessel is effected within the Realm, whilst the vessel is on a voyage to a foreign country, it may be agreed to have the entry made on the register of the ship in the Chancery of the Royal Consulate in the place where the ship is or to which she is bound, provided that such place be stated in writing at the same time as the demand for a copy of the title (to be registered). In this case the Superintendent of the Mercantile Marine must immediately transmit to the Consular Official (at the place) mentioned, at the expense of the person requiring registration, a copy of the title certified [*autenticata*] by himself.

The contract takes effect as to third parties only from the date of entry on the ship's register.

Cf. S. 601

490. Contracts for building, selling, and mortgaging small craft not intended to go beyond harbours, roadsteads, rivers, canals, or lakes, as well as other vessels not provided with a register, have no effect as to third parties, unless they are copied into a special register by the authorities and in the forms appointed by Royal Decree.

491. Shipowners are responsible for the acts of the captain and other members of the crew, and are bound by the contracts made by the captain in respect of things concerning the vessel and the voyage. Nevertheless, every owner or co-owner, who has not personally contracted, can in any case free himself from the responsibility and obligations aforesaid, except wages and salaries of the crew, by abandoning the vessel and the freight earned or to be earned.

One who is, at the same time, captain and owner, or part-owner, cannot avail himself of the right to abandon. When the captain is a part-owner only, in default of a special agreement (to the contrary), he is only liable personally on contracts entered into by him in that which concerns the vessel and the voyage in proportion to his interest (in the ship).

Cf. B. 7, F. 216, G. 451—454, S. 621, 622, 624, H. 321, 322, P. 1326, 1332, 1339, 1347, E. 30, Sw. 12, 15, 16, 43, 49, 74, N. 65.
M.S.A. 1862, § 54 Diff.

492. Abandonment may be to all creditors or only to some.

The declaration of abandonment must be copied into the official Maritime Registers of the place where the vessel is registered, and the fact notified to creditors whose claims (titles) have been copied into the said registers or noted on the ship's register.

With respect to creditors who have brought an action or obtained a judgment, notice of abandonment must be given

through the officer of the Court (*usciere*) at the address for service, or failing that, in the registry of the Tribunal of Commerce, within eight days from the date of the citation or order, on peril of its being set aside.

This article has no counterpart in the other Codes.

See *Joseph W. Dyer and others* v. *The National Steamship Co.*, 4 Asp., M.L.C., p. 26, for necessary steps to be taken in the United States, when it is sought to limit liability to the value of the ship, and also U.S. Statute, 26th June, 1884, § 18.

M.S.A. 1854, § 514; M.S.A. 1862, § 54; Com. Law Proc. Act, 1860, § 35; Ad. Court Act, 1861, § 13.

493. In case of abandonment, any creditor may take the vessel in settlement of his account, on condition that he pays the other privileged creditors. If there are several creditors (who desire to take the ship) preference is given to the first who declares his intention of doing so, and amongst contemporaneous declarations, to the creditor for the largest sum.

If no creditor takes the vessel in settlement of his account, it shall be sold at the request of the creditor who has been most active [*più diligente*] in the matter, the proceeds divided amongst the creditors; and the residue, after payment of the creditors, returned to the owner.

Cf. F. 214, S. 597.

494. The owner can discharge the captain..

In case of discharge, there is no claim for damages unless the right of claiming them has been agreed upon in writing.

If the captain who is discharged is a co-owner of the ship, he can surrender his share to the other co-owners, and require the capital which it represents to be paid over to him.

The amount of this capital is ascertained by experts.

Cf. B. 8, 9, F. 218, 219, G. 460, 515, 522, S. 626, 629, H. 328, 329, P. 1348, 1349, E. 32, 33, Sw. 10, 25, N. 5, 7, 9.

Macl. 197; M. and P. 129; News. 113; M.S.A. 1854, §§ 240, 263.

495. In everything that concerns the mutual interests of

the owners of a vessel, the decisions of the majority are binding on the minority.

A majority is constituted by an interest in the vessel exceeding half its value.

The Court must decree a sale by auction [*vendita all' incanto*] of the ship if demanded by such a number of co-owners as, taken together, own at least half of it, unless there is an agreement to the contrary.

If the sale of a ship is required under pressing and serious circumstances touching the interests of all concerned, the Court may decree sale, although the owners who demand it only represent a quarter of the ship.

Cf. B. 11, F. 220, G. 457—459, 470—473, S. 609, 619, H. 320, 323—326, 331, 335, 340, 365, 366, P. 1325, 1340—1342, E. 34, Sw. 6 Diff., N. 5, 7, 8, R. 825—827.

The last clause is not found in any of the other Codes.

24 Vict., c. 10, § 8. *The Marion*, 10 P.D. 4.

F. W. RAIKES.

V.—THE PENALTY FOR THE CARRIAGE OF CONTRABAND GOODS.

THE object of the present article is to ascertain what foundation there is for the doctrine that a ship is liable to condemnation, solely because contraband goods are carried in it with the owner's knowledge. It would be a matter of great importance to shipowners, if a State engaged in naval warfare were to act upon a principle laid down by some modern authorities. For, although the owner of a general ship is frequently ignorant of the nature of its miscellaneous cargo, one of the results of our rapid means of communication is that in most cases contracts of affreightment are now made under the direction, or at least with the consent, of the shipowner.

Formerly, the confiscation of vessels laden with contraband goods was not uncommon. This cannot be wondered at, when we consider that belligerents even assumed the right to forbid all trade with their enemies, as in the much-quoted case of the States General in 1599. Queen Elizabeth, in 1589, confiscated a merchant fleet of the Hanse Towns, carrying corn and munitions of war to Spain. Again, in 1626, by the second Proclamation of Charles I., during the war with Spain, ships carrying contraband goods were subjected to confiscation, "whereby His Majesty doth put in practice no innovation, since the same course hath been held and the same penalties have been inflicted by other States and princes, upon the like occasions, and avowed and maintained by public writings and apologies." (Robinson's *Collectanea Maritima*, 68.)

About the middle of the seventeenth century a marked change took place in the Law of Nations in favour of neutral commerce. (Twiss, *Law of Nations, War.* s. 128.) Treaties do not prove a general rule of law; but those of the latter part of the seventeenth and beginning of the eighteenth century may at any rate be quoted in proof of the tendency of the change. Thus, in the Treaty of 1648 between the United Provinces and Spain it is expressly stipulated that the ship carrying contraband goods shall go free. (Marquardus, *De Jure Mercatorum*, 648.) Similar provisions are contained in other Treaties. There is also evidence that about this time the Maritime Powers relaxed the penalty, independently of Treaties. The Danish Ordinance of 1659 says that the vessel shall be free (Rob., *Coll. Mar.*, 185; Marquardus, 653). The French Ordinance of 1681 contains no mention of a penalty on the ship (Pothier, *Traité de la Propriété*, s. 105), while the supplementary Ordinances of 1704 and 1744, which are much more elaborately worded than their famous predecessor, expressly declare that the ship is not liable to condemnation.

(Valin, *Traité des Prises*, II., 86, 139; Valin, *Commentaire sur l'Ordonnance*, L. III., Tit. 9, Art. XI.) The Swedish Ordinance of 1715 also, while declaring that the contraband goods are to be forfeited, is silent with regard to the ship, whence we may infer that the latter escaped the fate of the goods (Rob., *Coll. Mar.*, 174). There is no reservation either in the Ordinances or Treaties in the case of the owner's privity.

The application of the doctrine of privity to contraband goods is chiefly due to Bynkershoek and Heineccius. The latter's treatise *De Navibus ob Vecturam Vetitarum Mercium* was published in 1721; Bynkershoek's *Quaestionum Juris Publici Libri Duo* appeared in 1737. Bynkershoek did not fail to perceive the relaxation that had taken place, although personally averse to it. He admits that the Ordinances as well as the Treaties of his country exempted the vessel from being confiscated with the goods, but adds: "It is not thence that the Law of Nations is to be deduced. Reason, as we have said before, is the supreme Law of Nations, and she does not permit that we shall understand these things altogether generally, and without distinction." Therefore the ship is to be condemned or released, according as the owner knows or is ignorant of the carriage of the contraband goods. He founds the distinction on a Roman Revenue Law, and gives no instance of its adoption in the modern Law of Nations (*Q.J.P.*, L. I., c. 12). Heineccius also makes the vessel liable to condemnation, unless the owner is ignorant of the carriage of the contraband goods. To justify the condemnation of the ship he quotes the Danish Ordinance of 1659, in which the opposite rule is laid down. His reference to Marquardus, 656, shows that he misunderstood the Instructions of the Danish Admiralty giving effect to this Ordinance. According to the Instructions ships carrying contraband goods are to be brought in for enquiry, not necessarily for condemnation. He further relies on an

Ordinance of 1648 of the States General, which, however, makes the ship liable when false papers are used. (Marquardus, 644.) Like Bynkershoek he deduces the distinction from the Roman Law. (*De Nav.*, etc., c. 2, ss. 3—6.)

That the chief reason for modifying the rule condemning the ship was the hardship often inflicted on innocent owners is highly probable. In a note to *The Franklin* (3 Rob. 222) Sir C. Robinson cites a clause of the Treaty of 1655 between France and the Hanse Towns, which supports this view. But it does not follow that the relaxation was, in fact, limited to cases in which the owner was not privy. It is more likely that, as M. Cauchy says, on account of the difficulty of applying the distinction in practice, the confiscation of the ship was given up. (Cauchy, *Droit Maritime International*, II., 210, ed. 1862.) This is confirmed by the fact that none of the eighteenth century text-writers subsequent to Bynkershoek, adopt his doctrine.*

It has been said that the French Ordinance of 1778, which has never been repealed, under which the ship and the whole of the cargo are liable to confiscation when two-thirds in value of the cargo consist of contraband goods, is based on this distinction, as knowledge on the part of the owner might be presumed in this case. It is, at any rate, an equally reasonable explanation of the Ordinance to say that the object of the French Government was simply to discourage trade in contraband, by making the penalty greater. The French Prize Law had hitherto shewn no tendency to make the owner's privity an element to be considered. (Valin, *Commentaire sur l'Ordonnance*,

* In the English edition of G. F. Martens's *Law of Nations*, by Cobbett, published in 1802, such a distinction is mentioned as part of at least of the older maritime practice. I cannot find this in the original Latin treatise (*Primae Lineae Juris Gentium*) nor is it in the 1st and 2nd French editions of the *Droit des Gens*, published at Göttingen, in 1789 and 1801. The English editor was probably under the influence of Sir Christopher Robinson's views.

L. 3, Tit. 9, Art. 7, and Tit. 19, Art. 11.) An intention to adopt the contrary principle would have been very imperfectly carried out by the hard-and-fast rule of this Ordinance.

Our knowledge of the decisions of the British Prize Courts during the early part of the eighteenth century is, unfortunately very scanty. Some useful information is, however, afforded by the notes of Sir George Lee, Judge of the Ecclesiastical Court at Doctors' Commons. Sir George's note-book was placed by Dr. Lee, a member of his family, in the hands of Dr. Pratt, who has published a number of extracts therefrom, in his treatise on the *Law of Contraband*. They relate to cases decided between 1741 and 1750, in most of which Sir George Lee was engaged as advocate. The notes do not warrant the conclusion that at this period the Prize Court condemned a ship for the owners' privity, when their conduct and the master's were straightforward. In the cases of *The Juffrow Susanna* (p. 67), *The Eendraght* (p. 123) and *Le Mars* (p. 141) the master was a part-owner, yet even his share was not confiscated. Another ship, *De Vlught naa Ægypten* (p. 125), was also restored, although the sole property of the master. This case would be conclusive as to the English practice at this time, but for some special circumstances. The ship was Dutch, the contraband goods were small in quantity, and would not have been contraband under the Treaty of 1764 with the States General. The Court held that this treaty did not apply, but the master may honestly have thought otherwise. *The Brigitta Catrina* (p. 153) was laden with an entire cargo of ship's timbers, which were condemned; yet the vessel, of which the master owned half, was restored. When the question of privity arose, it seems always to have been in connection with fraudulent proceeding, as even in cases of fraud the Court sometimes restored the ship, when it was clearly shown that the owners were innocent. For instance, the master of *The Fredericus Secundus* (p. 104) had entered

into a charter-party, by which, while the ship's real destination was Bordeaux, the papers were to be made out for Lisbon. There were six bills of lading on board, five being colourable. Sir George Lee took the following note of the judgment: "The owners, as the captain swears, did not know of the charter-party. By the text-law, the ship is not forfeited, unless the owners had knowledge of the contraband goods being put on board. . . . . And therefore, as it does not appear that the owners of the ship were privy to this transaction of the master's, I declare the ship to be restored." *The Providentia* (p. 144) is likewise an instance of colourable papers, and of concealment of the contraband goods by the master; yet the ship was restored.

Sir George Lee records five cases of the condemnation of the vessel. In *The Vrouw Anna Maria* (p. 120) there was fraud. The Court said: "These contraband goods were put on board by the consent and privity of the owners of the ship. The master, who is a part owner, signed false bills of lading." The note of *The Slots Copenhagen* (p. 49) does not show clearly why the ship was condemned. The Court said: "I am of opinion the cargo is lawful prize. I am not so clear as to the ship; but as she was chartered by the captain, who knew what the cargo was, I think the ship is likewise liable to condemnation." The captain was not one of the owners, and there is no mention of privity on their part. The grounds for condemning *The Mid Gud's Hielpe* (p. 191) are not stated, but there can be little doubt that the reason was the want of a passport, as required by the Treaty of 1661 with Denmark (see p. 205). *The Hewa* (p. 62) was probably confiscated for the same cause. The only other case is *The Elizabeth Catherina* (p. 115), in which the Court held that the ship had been hired by and was assisting the enemy, and that the master, who was a part-owner, had acted colourably.

It is likely that nothing more would have been heard of the doctrine of privity, but for the inference which some writers have drawn from a couple of Sir William Scott's judgments. The general rule laid down by him in *The Ringende Jacob* (1 Rob. 89) is different. Here he says: "The carrying of contraband goods is attended only with the loss of freight and expenses, except where the ship belongs to the owner of the contraband cargo, or where *the simple misconduct of carrying a contraband cargo* has been connected with other malignant and aggravating circumstances." Again, in *The Franklin* (3 Rob. 217), he observes: "Anciently the carrying of contraband did, in ordinary cases, affect the ship, and although a relaxation has taken place, it is a relaxation the benefit of which can only be claimed by fair cases. The aggravation of fraud justifies additional penalties."

The cases which are cited as authorities for condemning the ship on account of the owner's privity are *The Neutralitet* (3 Rob. 295) and *The Jonge Tobias* (1 Rob. 329). In the former, after stating the same rule as in *The Ringende Jacob*, Sir W. Scott continues: "The circumstances of the present case compose a case of exception also; for it is a case of singular misconduct on the part of the asserted ship owners. They are subjects of Denmark, and as such are under the peculiar obligations of a treaty not to carry goods of this nature for the use of the enemies of Great Britain. . . . . This ship goes to a foreign port, to effect that which she is prohibited from doing, even for the produce of her own country; in this respect throwing off the character of a Danish ship by violating the treaties of her country; and all this is done with the full privity of the asserted owner, who is the person entering into the charter party. In such a case as the present, the known ground on which the relaxation was introduced, the supposition that freights of noxious or doubtful articles

might be taken, without the personal knowledge of the owner entirely fails, and the active guilt of the parties is aggravated by the circumstances of its being a criminal traffic in foreign commodities and in breach of explicit and special obligations. The confiscation of a ship so engaged, will leave the general rule still untouched, that the carriage of contraband works a forfeiture of freight and expenses, but not of the ship." The act of aggravation which Sir William Scott imputes to the owners is not the mere carrying of the goods, but the violation of a treaty. It is straining the effect of the judgment to deduce from it the rule that the owner's knowledge of the nature of the cargo is in itself a valid reason for condemning the ship.

In *The Jonge Tobias* the contraband cargo belonged to one of the owners, and his share of the ship was confiscated. With regard to the other owners Sir W. Scott said: "They do not appear to be affected with a knowledge of the cargo; the presumption is against them certainly, but that is not sufficient to induce me to go the length of condemning their shares. What I shall do will be to condemn Mr. Schroeder's share;* and require an attestation of the other part owners that they had no knowledge of the contraband goods; for being only part owners of the ship, and not general partners with Mr. Schroeder, I shall not hold them to be necessarily affected by his criminal acts." The Judge does not expressly state that if they had been privy to the carriage of the goods, their shares would also have been confiscated; but his decision, as reported, lends some colour to the inference that he had such a result in his mind. It is possible that, during the hearing, their advocate had stated that they had no knowledge whatever of the nature of the cargo, and that in consequence of such a statement Sir William Scott intimated that he would release their shares, upon their making affidavits to this effect. The broad fact

* Schroeder owned the contraband goods.

remains that, notwithstanding the large number of ships carrying contraband goods captured during this great maritime war, there is no record of any being condemned merely because of the owner's privity. Yet it is incredible that if the British Prize Court acted on such a principle, there were no cases in which the shipowner's privity might have been proved, and a successful claim for the condemnation of his property made by the captors.

Chancellor Kent, who refers to Sir William Scott's leading decisions, including *The Neutralitet* and *The Jonge Tobias*, does not deduce from them the condemnation of the ship on account of the owner's privity, but states that there must be aggravating circumstances, as false papers or fraud. (*Commentaries*, Pt. I., s. 7; p. 339 of Abdy's 2nd edition.) Duer, Wheaton and Dana, who cite these cases, also ignore the doctrine of privity. (*See* Wheaton on *Captures*, c. 6, s. 6; Duer, I, 624; Dana's note to Wheaton's *Elements*, s. 507.)

We have a statement of the views of the United States Supreme Court to the same effect in a judgment delivered by Mr. Justice Story in *Carrington* v. *The Merchants' Insurance Company* (8 Peters, 495): "The vessel and the remaining cargo, if they do not belong to the owner of the contraband goods, are not subject to the penalty of confiscation. The penalty is applied to the latter, only when there has been some actual co-operation on their part, in the meditated fraud upon the belligerents, by covering up the voyage under false papers, and with a false destination." After considering *The Neutralitet* and *The Franklin*, he continues (p. 521): "The belligerent has a right to require a frank and *bonâ fide* conduct on the part of neutrals, in the course of their commerce in time of war; and if the latter will make use of fraud and false papers, to elude the just rights of belligerents, and to cloak their own illegal purposes, there is no injustice in applying to them the penalty of

confiscation." I will finally quote the decision of the Supreme Court in *The Bermuda* (3 Wallace, 514), given during the late Civil War. The Court held that "the conveyance even of contraband goods will not in general subject the ship, but only the goods to forfeiture." This rule "is founded on the presumption that the contraband shipment was made without the consent of the owner given in fraud of belligerent rights, or at least without intent on his part to take hostile part against the country of the captors; and it must be recognised and enforced in all cases where the presumption is not expelled by proof. The rule, however, requires good faith on the part of the neutral, and does not protect the ship when good faith is wanting" (p. 555). The decisions of Sir William Scott and Story are next noticed with approval, after which Chief Justice Chase remarks: "Mere consent to transportation of contraband will not always or usually be taken to be a violation of good faith. There must be circumstances of aggravation. The nature of the contraband articles and their importance to the belligerent, and the general features of the transaction must be taken into consideration in determining whether the neutral owner intended, by consenting to the transportation, to mix in the war." It is clear that, when the carriage of the goods is an honest and purely commercial undertaking and the ship is not in the service of the belligerent, the privity of the owner will not, in the opinion of the highest Court of the United States, justify the condemnation of the vessel.

In their recent wars Continental states have usually either exempted the ship from condemnation, or only made it liable when the chief part of the cargo is contraband. France still adheres to the two-thirds rule of the Ordinance of 1778. (Circular of July 25th, 1870.) In 1864, Austria, Prussia and Denmark declared the ship to be good prize, when the whole cargo was contraband. (Austrian Ordi-

nance, March 3rd, *Archives Diplomatiques*, 1864, Vol. II., p. 132; Danish Ordinance, February 2nd, *Ib.* p. 120; Prussian Ordinance, June 20th.) The Austrian Ordinance of July 9th, 1866, made the ship liable when the greater part of the cargo consisted of contraband goods. (*Reichs Gesetzblatt*, July 14th, 1866.) Italy alone has adopted the severe rule of olden times. According to Article 215 of the Mercantile Marine Code of 1865, vessels laden only partially with contraband goods are to be confiscated. This Article was in force during the war of 1866.* (*Arch. Dipl.*, 1866, Vol. III., p. 119; Vidari, *Del Rispetto della proprietà privata fra gli stati in guerra*, 297, 337.) M. Bulmerincq states that the Russian Rules of 1869 subject vessels carrying full cargoes of contraband goods to condemnation. (*Revue de Droit International*, 1882, p. 160.) However, in 1877, Russia adopted a more lenient practice, substantially agreeing with that of England. (*Journal de St. Pétersbourg*, May 14—26th, *London Gazette*, June 5th.)

It is superfluous to give extracts from the works of text-writers for the purpose of proving a negative. Most of the writers of the present century do not declare the ship to be good prize because of the owner's privity. Among them are Reddie (*Maritime International Law*, II., 568), Sir Travers Twiss (*Law of Nations, War.* s. 149), Manning (2nd ed., 381—384), Sir Robert Phillimore (*International Law*, III., s. 275, ed. 1873), Joseph Chitty (*Law of Nations*, 127), Marquardsen (*Der Trent Fall*, p. 48), Cauchy (II., 210), and Ortolan (*Dipl. de la Mer*, p. 197, 4th ed.). The last-named, like most jurists, has his own opinions of what the Law of Contraband should be,

* The later tendency of Italy, however, seems to be towards leniency. Article XII. of the Treaty of Commerce of 1871, between the United States and Italy, provides that "in the unfortunate event of a war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure;" but the exemption does not extend to vessels and their cargoes attempting to enter a blockaded port. (*Réc. Samwer et Hopf*, 2nd Series, Vol. I., p. 57.)

and argues in their favour. But he does not make them the standard for determining the actual state of the law. He gives a summary of the grounds on which, in practice, ships have been condemned, but does not say a word about privity. Dr. Gessner favours, in theory, the condemnation of the ship when the owner knows of the nature of the cargo. This statement of his views gives weight to the avowal in the same paragraph of his *Droit des Neutrès sur Mer* (2nd ed., p. 147), that the modern practice is more indulgent. In M. de Boeck's work, *De la propriété privée ennemie sous pavillon ennemi* (Paris. 1882.), the penalty for the transportation of contraband goods is discussed at some length (ss. 646—659). M. de Boeck's statement of the Prize Law of the various States also agrees with my contention.

A distinguished German jurist, Heffter, was the first of the recent textwriters to make the ship liable for the owner's privity. (*Das Europäische Völkerrecht*, s. 161. The first edition appeared in 1844.) A few years later Wildman enunciated the same doctrine, citing in support of it only *The Neutralitet* (*Institutes of International Law*, II., 216). He is followed by Halleck (*International Law*, c. 24, s. 5; c. 26, s. 5, in Sir Sherston Baker's edition), who, after stating various grounds for condemning the ship, refers indiscriminately to a number of cases. The few of them that relate to the point under discussion, but do not support his view, have already been examined.

Heffter, in his first edition, quotes only the Roman Law *De Publicanis*, the principle of which Bynkershoek and Heineccius had adopted, and Jacobsen's *Seerecht*, which does not bear out his proposition. In his fifth edition he also quotes Wildman and Halleck, Manning (p. 309), "with regard to the high authorities of Bynkershoek and Scott," Pando (*Elementos del Derecho Internacional*. Madrid. 1843, p. 496) and Hautefeuille (IV. 346). Manning, however, relies on the high authority of Bynkershoek and Scott

to prove that when the ship and contraband cargo belong to the same owner, they are both involved in the same fate. Although he mentions Bynkershoek's distinction between the shipowner's knowledge or ignorance of the nature of the cargo, he does not seem to think that it is applied in International Law (2nd ed., by Amos, p. 383). Neither Pando nor Hautefeuille declares the ship to be good prize on account of the owners privity, so that we are in fact reduced to Wildman's and Halleck's readings in *The Neutralitet* and *The Jonge Tobias*. In the note to s. 161 Heffter admits that in practice the distinction has not always been made; his reference to Jacobsen (p. 656), Ortolan (p. 180) and Massé (s. 216), for the French, and Phillimore (III. 371) for the British practice, is a virtual admission that the two greatest naval powers do not recognise the distinction.*

Another eminent German writer, Professor Bluntschli, has been understood by Mr. Hall to sanction the condemnation of the ship on account of the owner's privity. (Bluntschli, *Das Moderne Völkerrecht*, s. 810.) This is not quite accurate. In the passage referred to by Mr. Hall, Bluntschli says, without giving any authority, that the ship cannot be good prize, unless the owner sanctioned the transportation of the contraband goods. He adds that the ship is liable only in cases of misconduct (*Verschuldung*). Whether mere knowledge constitutes misconduct, is left unexplained.†

* In the French version of Heffter's work, revised by the author it is stated that "le navire saisi lui-même ne peut être déclaré de bonne prise que dans les cas où ses armateurs ou propriétaires avaient pleine connaissance de la destination clandestine du chargement ou de la cargaison." The word "clandestine" makes the passage refer to cases of concealment. In the original German there is no such limitation.

† This statement of the penalty on the vessel is erroneous as well as imperfect; for ships have often been condemned for the misconduct of the master or other responsible agent without any privity on the owner's part. But in

Mr. Hall, whose work on International Law is one of the most recent of its class, states that if "the ship and the cargo belong to the same owner, or if the owner of the former is privy to the carriage of contraband goods, the vessel is involved in their fate." (*International Law*, s. 247.) He refers to Wheaton, Phillimore, Heffter and Bluntschli, the two former presumably to prove the first part of his proposition, as they do not support the second part of it. The latter, then, is founded on the dicta of Heffter and Bluntschli.

It appears, therefore, that the writers who allow the condemnation of a ship on account of its owner's privity to the carriage of contraband goods must rely ultimately on a rule of the Civil Law, the applicability of which to the case is open to question, an opinion of Bynkershoek's, avowedly not in accordance with the maritime usage of his time, an unsatisfactory passage in Heineccius' treatise, and a questionable

treating of the Law of Contraband. Bluntschli seems quite to disregard the usage of maritime States when it conflicts with his ideas of justice. For instance, neutral property sent out in the way of trade is never contraband, but only subject to pre-emption; *e.g.*, coal going to a port where the enemy's fleet is lying is not contraband, although, on its arrival, it is almost sure to be used for warlike purposes (s. 806). Nor are provisions intended to feed the hostile army contraband. On the other hand, a neutral State, while not interfering with the despatch of small quantities of arms or munitions of war to a belligerent, must prevent their wholesale exportation (s. 766).

[Another recent German writer, who may be presumed to reflect Berlin views on Maritime Law, Privy Councillor of Admiralty Perels, whose book has been edited in a French version, by M. Arendt, Director at the Ministry of Foreign Affairs of the Kingdom of Belgium (*Manuel de Droit Maritime International.* Paris. Lib. Guillaumin, 1884), after laying down broadly (sec. 46, pp. 279-80) and without any reference to authorities, the doctrine that the carriage of contraband of war involves the seizure of the ship as well as of the goods (le fait de contrebande . . . . entraîne la saisie et la confiscation des marchandises coupables et du bâtiment qui les transporte); in a subsequent passage of the same section, p. 284, admits that practice is not uniform on the confiscation of the ship, and that it is formally excluded from some Treaties. --Ed.]

interpretation of Lord Stowell's dicta in the cases of *The Neutralitet* and *The Jonge Tobias*. Against these must be set the total absence of proof that, since the harsh rules of the older Prize Law were modified, the maritime States continued to confiscate the ship, unless its owner was ignorant of the nature of the cargo. Further we have the silent testimony of nearly all the leading writers on the subject. I think it clear that there is an overwhelming weight of authority on this point in favour of the ship-owner.

E. L. DE HART.

VI.—THE ITALIAN GREEN BOOKS ON EXTRADITION AND FOREIGN JUDGMENTS.

IN the autumn of 1881, the eminent Jurist, Pasquale Stanislao Mancini, while holding office as Minister for Foreign Affairs of the Kingdom of Italy, put forth a Circular on the difficult International question of Extradition, to which attention was drawn by the present writer in the pages of this *Review*.* Before resigning his Portfolio, the Minister had the satisfaction of setting a Royal Commission to work on the subject, and the further satisfaction of being able to leave to his successor in office, as well as to the Jurists and Diplomatists of other countries, a record of the views entertained by the Italian Commissioners.

The Green Book containing this record † is now before us, through the courtesy of the Minister to whose initiative it was due, and we therefore propose to continue our account of the important step taken by the Italian Govern-

* *Law Magazine and Review*, No. CCXLIII., for February, 1882.

† *Atti della Commissione Ministeriale per lo studio di un Progetto di Legge sulla Estradizione.* Roma. Tip. del Ministero. 1885.

ment, by laying before our readers an analysis of the debates and conclusions of the Royal Commission. The composition of the Commission was such as to ensure the representation of various schools of Juridical Thought. It included men of experience in the several branches of the public service most concerned with the question alike in theory and in practice, Diplomatists, Procurators General, Professors of Penal and of International Law, Councillors of Courts of Cassation and Appeal, Deputies, and Senators of the Kingdom. The names of the Commissioners seem worth recording here.

The President was the Deputy Comm. Crispi, and he had for his colleagues :—

The Minister Plenipotentiary Baron Blanc, then General Secretary of the Ministry of Foreign Affairs.

The Senator Comm. Canonico (formerly Professor in the University of Turin), Councillor of Cassation, Rome.

Comm. Casorati, Councillor of Appeal, then temporarily attached to the Ministry of Grace and Justice.

Comm. Ellero, Councillor of Cassation, Rome.

The Deputy Comm. Nocito, Professor of Penal Law in the Royal University of Rome.

Comm. Oliva, Procurator-General at the Court of Appeal, Milan.

The Senator Comm. Paoli, First President of the Court of Appeal, Florence.

Comm. Peiroleri, Director-General of Consulates and Commerce at the Ministry of Foreign Affairs.

The Senator Comm. Pessina, Professor of Penal Law in the Royal University of Naples.

The Deputy Comm. Pierantoni, Professor of International Law in the Royal University of Rome.

The Deputy Comm. Tajani.

The Deputy Comm. Varè.

The Deputy Comm. Villa.

Cav. Puccioni, Secretary of the Ministry of Foreign Affairs, Secretary of the Royal Commission.

The Commission, it will thus be seen, was a strong and a representative one: its discussions and resolutions are the more worthy of careful study.

In convoking the Commission, the Minister for Foreign Affairs had, as may be remembered by our readers, abstained from deciding which of the two leading theories, that of a General Penal jurisdiction over all kinds of offences wheresoever committed, or that of an improved application of the principle of Extradition, was the better in the abstract. This, His Excellency considered, was a question to be solved in the future. For the present day, and for practical purposes, the system of Extradition, being the one which had the preference of Governments as well as of the majority of Criminalists, was the one to be kept before the Commission, and to this their attention would have to be given, in the practical shape of drafting a Law on Extradition. Such a Law, though Municipal in its character, would, the Minister justly pointed out, if it did not actually effect a unification of existing Laws, at least tend to bring a greater uniformity into the language of the Conventional Law of Extradition. To effect this, would unquestionably be to go a long way towards simplifying the whole problem, and the mere attempt is sufficient to invest the labours of the Italian Commission with deep interest for all civilised States.

In opening the proceedings of the Commission on the 27th November, 1881, the Minister for Foreign Affairs gave a brief address, containing and enforcing the substance of the views enunciated in his Circular of the 15th October, and wisely laying down for their guidance the doctrine that although it were well for the Commissioners to do their work expeditiously, it were better still to do it well, and that on this account he would not rigorously hold them to

the short period named in the Decree instituting the Commission. On the Minister's withdrawal, the President pointed out to his colleagues the threefold division of which their subject was capable, viz., as to (1) the persons who are extraditable: (2) the offences for which Extradition may be accorded: (3) the Procedure which should regulate the granting of Extradition. A Committee was then appointed for the consideration of the existing Conventions, the questions to be placed before the Commission, and the drafting of a Law. In the composition of this Committee, care was taken by the President to make it representative alike of the Bench, of Diplomacy, and of Juridical Science, and the five members named were Comm. Canonico, Comm. Oliva, Comm. Peiroleri, Prof. Pessina, and Prof. Pierantoni. A fortnight was allowed for the first labours of the Committee.

When the entire Commission held its second sitting, on the 29th January, 1882, it was thus enabled to enter at once upon the discussion of the Draft Law prepared by the Committee, and the first two Articles were passed, after long and close scrutiny, and keen debate of some details. Into the particulars of these interesting discussions space and time alike prevent our entering at the present moment: they must be reserved for a further notice in an early number of this *Review*.

The Draft Law, as proposed in the Preliminary Draft, contained thirty articles: as passed by the Royal Commission it contains thirty-three articles. It admits extradition for all offences punished as such by Italian Law with the four exceptions of (1) culpable offences [*reati colposi*: the Preliminary Draft had *meramente colposi*. The distinctinction taken is, we must admit, not very clear to us]: (2) offences [*reati*] which the Italian Law visits with less than one year's imprisonment: (3) press offences: (4) purely military offences.

When Extradition is allowed for principals, it is also allowed for accomplices, and it is allowed alike for offences accomplished, and for those which were merely attempted or which failed in the attempt.

The Extradition of Italian subjects is not allowed, except in the case of persons who may have been naturalised subsequently to the offence charged as an Extradition offence.

Further information [*nuovi schiarimenti*] may be demanded by the Italian Courts if the Extradition is sought upon the ground of a warrant for arrest, or other equivalent document.

We may note that on the hearing of the demand for Extradition, at which the person charged may be represented by Counsel, and which must be in open Court unless deemed by the Court to be a case prejudicial to public morality, the accused may be heard on his own behalf by himself as well as by Counsel, and he is, notwithstanding the Crown right of Reply, always to have the final Reply by himself and his Counsel [*lo straniero e il suo difensore avranno sempre gli ultimi la parola.*]

This provision shews great care for the "stranger within the gates" of the Kingdom of Italy, brought before the Courts of a foreign land of whose very language he may be ignorant.

The regulations as to bail are the same as those for identical offences under the Italian Law.

It is carefully provided (1) that the person charged, if extradited, shall not be tried for any other than the extradition offence, without the consent of the Italian Government, if given on a fresh request; (2) that the person extradited shall not suffer a heavier punishment than that laid down by the Italian Law for the offence; (3) that no person extradited shall suffer capital punishment; (4) that the State to which he is extradited shall not give him up to another State for a previous offence without the consent of

the Italian Government, and under the reservations beforementioned.

No fresh charge is to be brought against the person extradited unless he has himself demanded to be charged for other offences, or to be handed over to the other State, or have had a month allowed him to leave the State to which he was extradited, or, having quitted it, shall have subsequently returned. The mention of a month here appears satisfactory, as putting an adequate obstacle in the way of purely illusory liberation, which is a thing to be guarded against if it be desirable that truth and justice should be intimately associated.

Political offences are excluded from the category of Extradition crimes, and similarly offences connected therewith [*fatti connessi*]. As to these last offences [*délits connexes*], reference may be made to an interesting paper by M. Coninck Liefsting, Vice-President of the Supreme Court of the Netherlands, read before the Association for the Reform and Codification of the Law of Nations, at the Conference at The Hague in 1875. Voluntary homicide during an Insurrection or Civil War is also excluded in the Italian Draft Law.

On the subject of Political offences as matter for Extradition, a long and interesting paper by Baron Blanc is appended, but can only here be mentioned, as also the valuable collection of observations and amendments of the various members of the Commission, the very useful parallel texts of the Preliminary and Final Draft Law, and the extremely full and interesting general Introduction, and the summary of Foreign Extradition Legislation, both drawn up by the Secretary to the Commission, Cav. Puccioni.

It will be seen that there is yet much for our consideration in the Green Book on Extradition.

In the Green Book on Foreign Judgments,* which has

* *Documenti Diplomatici presentati alla Cam. dei Deputati (Conferenza Dipl. per Norme Convenzionali di Dir. Internaz. Privato e per la Esecuzione dei Giudicati Stranieri).* Roma. Tip. della Cam. 1885.

reached our hands at a still later period, in fact while the present number of the *Review* was at press, we can only say that although the volume is one of less bulk, it is crowded with matter not less deeply interesting.

It cannot but be well-known to all who have studied his career that the work alike of protecting the "stranger within the gates," and of facilitating the equal administration of justice throughout the states of the Civilised World, has always been among the objects most constantly before the mind of Pasquale Stanislao Mancini. In office, and out of office, in the Chamber of Deputies, or in the Senate of his native land, in Congresses in foreign countries, his voice has uniformly been raised in favour of this good end. To find, therefore, as the Green Book on Foreign Judgments conclusively demonstrates, that the Minister for Foreign Affairs did his utmost to bring other Ministers into harmony with his views is only to find what we should expect, that Mancini, the Minister, was true to Mancini, the private citizen.

The questions raised in the proposal for a Conference on the subject of Foreign Judgments are necessarily numerous and complicated.* In point of fact, they embrace, as the alternative title of the Italian Green Book dealing with the proposal shows, nothing less than the settlement of Conventional Rules of Private International Law.

There are Jurists, we are aware, who object to this division of the Law of Nations. There are those who would prefer the designation Inter-Municipal, or some other yet to be suggested. There may also be those who prefer the phrase Conflict of Laws, or some equivalent thereof. The phraseology adopted seems to us of far less consequence

* We may refer to articles on the subject, in some of its various aspects, in the *Law Magazine and Review*, No. CCXXXIII., for August, 1879; *Foreign Judgments*: No. CCXXXVIII., for November, 1880; *Assumed Jurisdiction over Non-resident Aliens*, by F. T. Piggott, M.A.

than the making of a serious attempt at the, at any rate, partial solution of a very grave problem, whether it be called the Conflict of Laws, or by whatsoever other name it may be indicated.

The question is indeed a very serious and a very pressing one. The constant and rapid growth of International relations calls for the settlement of some general rules by which the ends of Justice shall not be defeated in Civil matters, just as the same growth calls for a similar settlement in Criminal matters, which we know by the name of Extradition. They are, in fact, it seems to us, but two different aspects of the same question, and therefore, although their common treatment in the same article at the present moment is an accident, it is one not without a certain significance.

For years past, it has been one of the objects which Mancini has had at heart to bring about something approaching to a settlement of this question, and he may be congratulated on having lived to do so much towards its attainment. For although the original form under which His Excellency proposed the question to the consideration of the several Governments may not be precisely that under which it will be first considered, yet the spirit which must animate the Conference when it assembles will none the less be the spirit of Mancini. The point whether the initial Conference shall be a Diplomatic or an open one is relatively immaterial. The real significance will lie in the assembling of a gathering of Jurists for the consideration of a scheme of Conventional Rules of Private International Law, just as the real significance of the recent Antwerp Congress of Commercial Law lay in the fact of the attempt at a settlement of General Rules of Maritime Law and the Law of Bills of Exchange, as the first step towards other and fuller settlements of the Conflict of Laws in Maritime and Commercial Law. And as it has been seen that a first step taken in

that direction implied others, and that a single meeting was really only enough to shew the ground that had to be covered, and consequently that there must be yet another assembly of the members of the Antwerp Congress, so it will probably be with the Foreign Judgments Conference, when it assembles, as assemble it shortly will, we have good reason to believe. This, of course, is a mere detail, and can only be settled by what the future may shew to be requisite. But we are sure that the patience which has known how to possess its soul through the tedium of Diplomatic negotiations extending over several years, will not be wanting to the adequate realisation of the objects of the Conference when once assembled.

The entire Green Book devoted to the Foreign Judgments Conference is indeed a record of the patience and unwearied devotion of the distinguished Italian Jurist to the cause which he has so long had at heart. The volume contains no less than a hundred and sixty-seven different documents, several of which have relative *Annexes*. And this total does not include the separate series of documents printed together at the end of the Diplomatic and other correspondence, but which is of equally high interest, containing, as it does, a very able *Mémoire* by the Minister Mancini himself, on the efforts of the Italian Government to bring about the realisation of an attempt at the Conventional Codification of Private International Law, which was sent to the various Governments as an *Annexe* to the Minister Mancini's circular of 19th September, 1882: a *Mémoire*, which the Italian Foreign Minister himself characterises as a remarkable Paper, by the Danish Minister of Justice Nelleman: a *Mémoire* by the Chilian Minister of Justice Vergara; and, lastly, a Report of the Peruvian Plenipotentiary Arenas, accompanied by the text of the Treaty for the introduction of uniform Rules of Private International Law among the South American States, drafted by the

Jurists and Diplomatists who formed the Congress of American Jurists in 1878. This Treaty was adopted and signed by the Plenipotentiary Arenas, for Peru and Costa Rica, and by the Envoys from Chili, Bolivia, the Argentine Republic, Bolivia, Equador, and Venezuela. There were, doubtless, as His Excellency Dr. Arenas observes in his *Mémoire* accompanying the text, certain special causes facilitating such an agreement among the South American States of Spanish foundation. Community of language and race helped to smoothe in the New World many difficulties which must be felt in the Old World. Still, the fact remains: the unity which the nations of the Old World are yet seeking to attain has been attained by the nations of the New World. Will the Old World be content to sit with folded hands and say that the task is an impossible one, that it is a weaving of ropes of sand, a making of bricks without straw? We scarcely think so, nor do we think that the effort would be without fruit, though the first attempt might not produce such complete results in the way of Codification as the Congress of American Jurists produced at Lima.

It is obvious, of course, that such a Conference as is proposed would not necessarily be the harbinger of a Golden Age of Peace. The history of the South American States themselves, since 1878, is sad proof of the reverse being quite possible. But the wars and revolutions which have marred the fair aspect of South America are no more of an argument against the benefit of a general agreement on the Conflict of Laws than the continued existence of War is an argument against urging the greater desirableness of Peace.

We have not attempted at present to give more than the merest sketch of the interesting contents of the Foreign Judgments Green Book, but shall hope shortly to return to its consideration, perchance after the Conference itself shall have met and begun its long desired and much needed work.

We are glad to observe that the Italian Minister has to record with special satisfaction the favourable tenor of the British reply to his invitation, and trust that this attitude will be maintained, whatever changes may be in store in regard to our Administration.

Special thanks are accorded to Sir Travers Twiss for his efforts at the Court of Berlin, and a place is given among the documents to the Resolutions of the Milan Conference of the Association for the Reform and Codification of the Law of Nations in 1883. The Resolutions were, indeed, only an outline. The details of a satisfactory scheme have yet to be filled in. But the ground is prepared, and we believe that it will ere long be possible to sow the good seed in the faith that it shall grow up into an exceeding great tree, under whose shadow we, and those who shall come after us may rest, when *vespertino erit lux*.

C. H. E. CARMICHAEL.

Quarterly Notes.

In view of the coming International Prisons Congress at Rome in November, we would draw attention to the very opportune publication in the *Rivista di Discipline Carcerarie* (Rome: Ministry of the Interior), No. III. for 1885, of an able and lucid Report to the Minister of the Interior by the Senator Comm. Canonico, giving an account of his recent visit to the principal prisons in Belgium, Germany, Sweden and Norway, Russia and Poland. Some of the places visited are probably little known to any outside the somewhat limited circle of their neighbours on the Continent; to the British and American members of the Congress they will probably be almost unknown.

It is pleasant to find that while not abstaining from criticisms on some points, and suggesting others as probably open to criticism by experts in certain details, the general impression left on Comm. Canonico's mind is one of progress and development of Prison Management on the Continent. And the nature of the details furnished in the Report seems to justify this feeling as a whole, though there are points to which we should be disposed to take exception which do not meet with disapprobation from Sig. Canonico. The account of the Russian prisons will be sure to attract the curiosity of the reader at the present time, when so much has been written on the subject from different points of view. It is but fair to the Russian Government that it should have all the benefit to which it may be entitled for recent improvements in prison building and in prison management. But it is none the less fair, we think, to point out that Comm. Canonico was not necessarily shown the places of detention appropriated to Nihilists, and also that he did not take the route to Siberia, and inspect the forts or prisons, whatever it may be most correct to call them, where the convicts destined for Siberia are herded on the stages of their long and weary journey. It is possible that if Comm. Canonico had been able to carry out such a tour of inspection his view of the general character of Russian prisons might have been modified.

Of course, in saying this, we do not forget that we should look at home. Nor do our own Judges forget it, but speak from the Bench with all the weight and authority of their position, when they observe on Circuit arrangements for the temporary custody of prisoners awaiting trial which they consider to stand in need of reform.

There are not a few lessons which those who are in authority over prisons in the United Kingdom might learn from Comm. Canonico's Report. The varied character of the occupations assigned to prisoners, and the valuable open air

work in some countries, notably in Italy, should be specially laid to heart. That the utterly useless occupation of oakum picking should maintain its position in this country, we can only account for by the wide prevalence of the "Do not stir Camarina" principle, so apt to prevail in all countries. Those who learn that artificial flowers are being made at Ploetzensee, near Berlin, and that the Campagna is being drained at the Tre Fontane, near Rome, should confess that on the Continent, at least, Camarina is being stirred, and should be grateful to Comm. Canonico for his very interesting and valuable Report.

* * *

Around the Agricultural Penal Colony of the Tre Fontane, we may remark, quite a literature has sprung up. The *Rivista di Discipline Carcerarie*, edited by the Councillor of State Comm. Beltrani Scalia, gave a long and elaborate description of the colony, illustrated by excellent engravings. In the *Nuova Antologia*, for September, 1882, the Deputy Comm. Nocito published a very interesting article, since reprinted (Rome : Tip. Bodoniana) under the title of *La Colonia Penale delle Tre Fontane.* It would be well if both these articles, so excellently adapted to informing persons unaware of the nature of the work initiated under the direction of the Trappist Community, could be republished, together or separately, for the use of members of the coming Prisons Congress in Rome, in November. The entire subject of Penal Colonies, involving useful work in the open air, is worthy of the most serious attention of all who are interested in the Reforming aspect of Prison Discipline, and it is a subject which has been closely and, as we believe, successfully studied in Italy.

* * *

Among the noticeable features of the literature which should receive the careful attention of all who are interested in Prison Reform, whether likely to be present at the

Congress in Rome in November or not, we must mention the very full and valuable Report and Tables of Statistics, which constitute part of the last official publications of Comm. Beltrani Scalia as Director General of Prisons for the Kingdom of Italy. These works take the several shapes of a thick volume entitled *Statistica delle Carceri* (*Regno d'Italia*), 1877-80 (Rome, 1883); *Estratto dalla Statistica delle Carceri*, 1881-2 (Rome, 1884); and lastly, *Relazione del Direttore Generale e degli Ispettori delle Carceri*, 1878-83 (Rome, 1884).

In each and all of these volumes there is much food for thought, and the indications afforded by the Tables should be compared with the Report of Comm. Canonico, and the Papers to be read at the forthcoming Congress in Rome, and other interesting matter communicated, during the years covered by these publications, to the *Rivista di Discipline Carcerarie* (Rome).

We had marked many passages to which space does not admit of our alluding here. But we would say generally that the volumes of the *Transactions* of the Social Science Association should be read alongside, and we would particularly name in the last volume (*Transactions*, Birmingham Meeting, 1884), the Papers by Mr. A. H. Safford, on Schools of Discipline, and by Mr. Alderman Manton on Prison Labour. These Papers bear very directly on the subjects of the International Prisons Congress, as well as on the matter of the Tables and Reports prepared and published by the Councillor of State Comm. Beltrani Scalia. The uselessness, from a financial point of view, of such work as oakum picking is well shewn by Mr. Alderman Manton, and those who read the Report by the Senator Comm. Canonico, of which we give a brief analysis in the present number, will see that other countries find better and more lucrative occupation for their prisoners. We hope that these subjects will receive the attention they deserve at the Roman meeting of the International Prisons Congress.

* * *

Students of Comparative Jurisprudence who are already familiar with Bachofen's well-known work, *Das Mutterrecht*, and with the side-light thrown on the same subject by the researches of Robertson Smith and McLennan, will be glad to welcome the still more recent contribution by a Dutch Jurist, G. A. Wilken, under the title of *Das Matriarchat bei den alten Arabern*, Leipzig, 1884. The subject thus chosen for investigation is one that lies at the very threshold of all enquiries into the early history of Family Law, and, although the *brochure* now before us deals primarily with the traces of *Matriarchat* amongst the ancient Arabians only, the learned author has collected a deal of interesting information from every available source on the general question. Wilken's views have already attracted attention both in this country and in America, and have provoked keen criticism from the pen of a well known English Oriental scholar, Dr. Redhouse, who has challenged most of his conclusions. Broadly stated, Wilken's contention, if accepted, would tend to establish that, in the historical development of legal ideas, the Rights of the *Matriarchat* have preceded those of the Patriarchate, for the simple reason that the further we follow up the stream of time to its earliest beginnings, the more faint become the traces of the institution of marriage, and the more prevalent the custom either of Polyandry or of promiscuous intercourse between the sexes. A necessary consequence of this primitive custom must have been that, as the identity of the father was rendered impossible, the principle *partus sequitur ventrem* came to be the prevailing rule. The mother thus, from force of circumstances, assumed that position towards her children which, under a more advanced stage of civilisation, when the institution of marriage came to be generally recognised, was naturally conferred upon the father, as being the proper head of the household. Polyandry, therefore, either in its rudest form, in which several

men, who were not related to each other *inter se*, possessed one woman in common, or, in its more developed form, in which, as a rule, several brothers had one wife between them, an instance of which we find in the old Brahmanic legend of the Pandava heroes of the *Mahabharat*, was the foundation of the prominence given in the earliest history of most nations to the mother's rights. Wilken, at all events, goes some length towards shewing that this was the case amongst the ancient Arabs, and he cites Strabo and Ammianus Marcellinus amongst the Classical writers, and the Collection of Traditions by Bochari, to prove that Polyandry very generally prevailed in Arabia. He then proceeds to shew that the same word (*batn*), which signifies tribe or family, means also the womb, thus indicating the kind of relationship which in primitive times was alone recognised by the "children of the desert;" and he finds another proof of the general correctness of his theory in favour of the existence of the *Matriarchat* in the early history of all nations, in the circumstance that the primitive *fetisch* or *totem* tribal worship was perpetuated in the female line—that is to say, the child followed the *totem* of his mother. Again, it appears that children were named after the mother, and even tribal names, such as the Banu "Chindif" (as Wilken writes it), were derived not from an original paternal ancestor but from an original maternal ancestress. But a still more interesting fact is this, that a sure proof of the original existence of the *Matriarchat* is traceable in primitive times in the recognition of prohibited degrees in regard to marriage only through uterine kinship—that is, through the mother and not through the father. Thus children of the same father but by different mothers were free to intermarry; a custom sanctioned by the laws of Solon, and prevailing also amongst the Malayo-Polynesian Races, the Jews, the Persians, and the Arabs. A survival of the *Matriarchat* may

also be traced in the notion which prevails to this day amongst the Arabs that a man inherits not the character of his father, but that of his maternal uncle, to whom a Damascene proverb ascribes two-thirds of the responsibility for evil deeds committed by the nephew, the remaining third share being borne by the latter himself. It is also worthy of note that although the advent of Islamism swept away much of the ancient customary law appertaining to the "period (as it was afterwards called) of ignorance," the effect of the pre-Islamic *Matriarchat* is still visible in certain parts of the Koranic law, and in the practice of certain Muhammadan sects, notably among the Shiahs. Thus the *Mutá* (or temporary marriage) is probably a modified survival of the polyandrous habits of the ancient population of Arabia, disguised in the somewhat more respectable garb of a marriage for a week, a month, a year, or a term of years, during which period the man has the exclusive enjoyment of the woman, but at the end of it the union, with all its legal consequences, ceases to exist. Marriages of this description are no doubt reprobated by orthodox Muhammadans, but the custom of centuries has proved too stubborn to be entirely extinguished by an expression of disapproval on the part of Moslem doctors. Hamilton found the practice very general in the city of Sounan in the north-east of Mocha; and the facility which it gives for change is but too consonant with Moslem character, of which Omm Charidja (who could boast of having had more than 40 husbands), furnishes perhaps an extreme type on the female side, while the famous dyer of Bagdad, Muhammad bin Tayib, who is said to have married no less than nine hundred wives in an otherwise uneventful life of eighty-five years, supplies us with an equally repulsive and pronounced one on the part of the stronger sex. Then again, the extensive rights of inheritance, dower, and alienation enjoyed by women under the Koranic Law were probably concessions to popular

views concerning the *Matriarchat*, although Muhammad was skilful enough to proclaim the same afresh as sanctioned by a new revelation, so as to break the continuity of the old customary law of the *Zâhlija* age. On the whole, then, and without overlooking the scholarly criticism of Redhouse, we may take it as tolerably well proved, that whether Polyandry was a universal practice in primitive times (which is a disputed question), or not, there appear at least to be traces of the custom amongst the ancient Arabs, and that, as a consequence, the *Matriarchat* found an expression amongst them, which Muhammad to some extent recognised in his own legislation. This is the point that the author of the *brochure* before us, seeks to establish, and, whether admitting his views to be proven or not, Wilken's Treatise should be read with attention by all who pursue the deeply interesting study of early Law and Custom.

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Into the criticisms offered by Dr. Redhouse, it is not necessary that we should enter at such length, since the *Journal* of the Royal Asiatic Society, in which they appeared (Vol. XVII., Pt. ii., for April, 1885), is likely to be much more generally known to English students of Archaic Custom than Wilken's book. It may suffice here to state that Dr. Redhouse considers that more has been claimed for Wilken than Wilken claims for himself, and that he holds Dr. Tylor's deductions from Wilken in his Presidential address to the Anthropological section, at the Montreal meeting of the British Association in 1884, were not warranted by Wilken's own language. Wilken's book Redhouse admits—as we admit it—to be a "very interesting book." But, he continues—and this is certainly a crucial point, "it does not even attempt to prove (though it asserts as an *à priori* conception) that a matriarchate system was ever in existence

among the Arabians in days of old; much less in modern times, as the words of Dr. Tylor, 'to this day,' would lead some readers to infer at a first glance." The beast-names, from which a full-blown "totem" system is supposed to have existed in Arabia, Redhouse brushes aside as "merely nicknames," which "sometimes passed on, as surnames, to the children and descendants of the individuals designated by them." That the *mutá*, or temporary marriage, of which much is made, has any connection with the matriarchate Redhouse clearly repudiates. Many of the stories told of alleged customs in various parts of Arabia, Redhouse shews to stand in need of careful sifting before acceptance, while some, he points out, are told of tribes on the White Nile, and are conceivable only on the supposition of their being of African race, which is certainly *à priori* the more probable hypothesis. On the force of the theory derived from the use of the expression *batn*, for clan, Redhouse has a close philological argument, which will well repay perusal. Indeed, we can do no better than refer all our readers, who take an interest in this question, whether as involving problems in Jurisprudence or in Ethnology, to study for themselves the able Paper by Dr. Redhouse, which has for us the special interest of having been placed in our hands for this *Review* by our late valued friend, W. S. W. Vaux, M.A., F.R.S., then Secretary of the Royal Asiatic Society.

To Gustav Hartmann belongs the credit of adding, in his recent treatise entitled *Juristischer Casus und seine Prästation bei Obligationen, &c.* (Jena: Fischer, 1884), a new and convenient term to our legal vocabulary. The impossibility of performing a contract arising from circumstances over which we have no control, is generally considered by German Jurists (*vide* Windscheid, *Pandektenrecht*, Vol. II.,

§ 264, p. 55) under the double classification of "original impossibility" (*ursprüngliche Unmöglichkeit*), and "subsequent impossibility" (*nachfolge Unmöglichkeit*), or of "objective and subjective impossibility," and by English writers under the terms *Vis Major*, or Act of God. But Hartmann is not satisfied with any of these expressions in order to mark the distinction between an impediment arising in consequence of some particular disposition of the Law, and other impediments appertaining to the domain of pure facts. He accordingly invents the phrase "Juristical Casus" for the former class, in which he would include such impeding causes as arise out of Judicial or official intervention; for instance, where a person is disabled from carrying out a contract for the sale of a chattel by its attachment and sale under a compulsory execution of a decree of Court, or from fulfilling a contract with a foreign trader by a prohibition of the Export Authorities, or in the case of a contract to fell timber by the intervention of the Forest Authorities under the provisions of the Forest Laws. In all these and other cases of a like nature, the impediment, in Hartmann's opinion, is of an absolute character, and has the effect of annulling the contract and of restoring the parties to their original position: *omnia in integrum restituuntur*. In a broad sense, it is true, all these cases may be said to fall under the denomination *Vis Major*, but this term would include many other cases of accidental impediment, such as an earthquake, a flood, or a dynamite explosion, which would obviously be outside the limits indicated by the expression *Juristical Casus*; and for the purpose of distinguishing the important class of cases included within the latter from the wider class embraced within the more general term *Vis Major*, the expression suggested by Hartmann seems to be at once intelligible and appropriate. Thus the case of *Howell* v. *Coupland*, L.R. IX., Q.B. 462, 1 Q.B.D. 258, where the seller was excused from the per-

formance of a contract for the sale of potatoes to be grown on his land, by reason of the crop having failed through disease, would not be a case illustrative of *Juristical Casus*, but of *Vis Major*. Suppose, however, A. contracts to take in cargo for B. at a foreign port. A.'s Government afterwards declares war against the country in which the port is situated. Here the fact of war being declared renders performance of the contract impossible, and, originating from a *political* act, the case would come within Hartmann's conception of *Juristical Casus*, and the contract would become void, according to the rule *impossibilium nulla obligatio*.

* * *

The office of the Admiral is one which by its title carries us back to the days when Saracen influence was strong in Southern Europe. The Great Admiral of Sicily, under the Kings of the Norman and Swabian lines, was one of the great officers of State, no less than the Great Logothete, whose title recalled the New Rome, the seven-hilled City of the Bosphorus.

Such an officer as the Admiral required deputies, and the history of those deputies, the Vice-Admirals of the Coast, has been investigated by Sir Sherston Baker in a recent Treatise, entitled *The Office of the Vice-Admiral of the Coast* (London: Privately printed, 1884). It is not often that an historical office, connected with the early administration of Maritime Law, has become involved in so much obscurity as that which surrounds the Vice-Admirals of our Coasts. Sir Sherston Baker has devoted much pains to the task which he had set himself, and he has printed quaintly illustrative documents gleaned from various, and often not easily accessible, sources. There were times when clergy were proposed for the office, and the objection taken to the proposition by Sir Leoline Jenkins (*Office of the Vice-Admiral*, p. 105), shews that the objection was based on the powers

of the Vice-Admiral as a Judge, which might extend to the pronouncing of the Rule of Court in a capital sentence. But this objection had, as Sir Leoline admits, been over-ruled in the case of Sir John Trelawney. The local influence of a great Cornish name evidently brushed away any feeling of respect for the Canonical disqualification.

Sir Sherston Baker may be congratulated on the amount of historical research condensed in the small compass of his elegant little volume.

We are glad to know that copies of this necessarily rare Treatise can be obtained through Messrs. Stevens and Haynes.

* * *

Legal Literature generally seems to be marked by a growing activity, as well as the Literature of the Law of Nations. We have to welcome a fresh contemporary beyond Tweed, who comes to us as *The Scottish Law Review* (Glasgow : W. Hodge and Co.), a Monthly Review of Jurisprudence, with Reports of Sheriff Court Cases. This development of fresh organs for the discussion of topics of interest to the legal profession argues an increasing attention to such topics on the part of the profession in Scotland as well as in England, and any signs of the breaking down of the icy indifference to legal literature which has been too characteristic of the profession in both countries cannot but be regarded by us as of good omen for the future.

We note that articles have already appeared in the first and subsequent numbers of the *Scottish Law Review* on subjects of general interest such as the Employers Liability Act, the Agricultural Holdings Act (Scotland), Trade Marks, and, last not least, on Registration, as well as on the Sheriff Courts, to which a portion of the contents of each number is devoted.

We shall watch old friends and new beyond Tweed with

interest, wishing well alike to the *Scottish Law Magazine* in the Northern Athens, and to the *Scottish Law Review* in the City of St. Kentigern.

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The subject of Land Transfer has for some time past been attracting serious attention in the United States of America as well as in England, and its consideration in our pages is therefore the more desirable. We have, indeed, already from time to time noticed the demands for Land Transfer Reform made in the State of New York by an Association formed for that purpose, first under the name of the West Side Association, and subsequently under the title of the Land Transfer Reform Association of the City of New York (Incorporated 1883). Since the article printed in our current number came into our hands, we have been favoured with a Report (dated 17th April, 1885) by Mr. Dwight H. Olmstead, one of the Commissioners of Land Transfer appointed by the Legislature of the State of New York, and it may not be without interest to append Mr. Olmstead's principal recommendations, bearing in mind, of course, the different conditions, in many respects, of the circumstances of Real Property in the New World. Mr. Olmstead is in favour of a system of Local Indexes, the object of which is to limit the area of search. He would keep the Record of mere liens or claims separate from the Record of Transfers of Freehold or Fee-simple estates, and the indexes of such Transfers, "so that when the liens shall have been paid or discharged they shall not continue to incumber the permanent record of the title." Lastly, whatever area of land is chosen for an Index, he would have every instrument in any way affecting that parcel indexed under it. These are the "General Principles" to which Mr. Olmstead believes that "any system of indexing land records must conform in order to be efficient for the purpose indicated,"

viz., "first, to inform persons who may be interested what instruments have been recorded or filed affecting any particular parcel of land, and to enable such persons with readiness to find and inspect such instruments, it may be in order to see that the statutory requirements relating to them have been complied with, or to determine rights thereunder, or for other reasons; and second, to notify persons proposing to deal in land of all previous dealings therewith, in order to guard against mistake or fraud."

In a matter so serious and affecting such considerable interests as Land Transfer, it is eminently necessary that we should place information and suggestions before our readers, and it is no less necessary that we should do so in the spirit which animates Mr. Olmstead's Report, namely, that all Reforms, even where we might personally be inclined to advocate them, "should be delayed until careful consideration can be given to them, both upon their intrinsic merits and in relation to their bearing upon existing Laws."

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The Codification of the Law of Bills of Exchange, as a branch of International Law, was one of the objects of the recent Antwerp Congress on Commercial Law. The question is one to which the late Mr. H. D. Jencken had devoted considerable attention, and a Paper of his on the subject was printed in this *Review*, No. CCXXII., for November, 1876. Among those who took part in the recent discussion at Antwerp was Dr. Thomas Barclay, who, from his personal acquaintance with the working of the French as well as of the English Law, was well fitted to aid in the elucidation of the problem. Dr. Barclay has on more than one occasion come before the Legal public both in this country and in France, as the author of Treatises on points of Commercial Law. We are indebted to him for a useful translation of *The French Law on Bills of Exchange, Promissory Notes and Cheques*, compared with the

Bills of Exchange Act, 1882 (London and Paris. Waterlow. 1884), and also for a Treatise, brought out in conjunction with a French Jurist, M. Emmanuel Dainville, Contrôleur de l'Enregistrement, Paris, and entitled, *Les Effets de Commerce dans le Droit Anglais* (Paris. G. Pedone-Lauriel, Successeur. 1884). These Manuals may be consulted with profit on both sides of the Channel, and, like the useful Review published by the British Chamber of Commerce in Paris, under the title of the *Anglo-French Mercantile Review* (London and Paris. Waterlow), cannot fail to help the cause of the simplification and assimilation of Commercial Law which the Antwerp Congress was intended to serve. The Antwerp Congress could do little more, in the time at its disposal, than open the question, but it is satisfactory to know that it will meet again, and carry its good work still further into the wide field of Commercial and Maritime Law.

Reviews.

The Elements of Law. By WILLIAM MARKBY, D.C.L., Reader in Indian Law in the University of Oxford. Third Edition. Henry Frowde, Clarendon Press Warehouse. 1885.

There are growing signs in the increasing number of translations of German and other Continental law books, and in the activity displayed by the Universities in systematising and expanding their course of legal studies, that the scientific study of Law is gradually but surely gaining ground in this country. Each year the circle of the old race of lawyers is becoming narrower, whose only legal training consisted in attendance for the space of one year at a Barrister's chambers, where they might, it is true, learn something of the practical side of their future profession, but where they had neither the leisure nor the opportunity to follow to their sources the principles upon which the law of their country was based, nor to compare the different

parts of that law with one another, still less to examine the relation in which their own law stood to that of other European countries. The old order is, in fact, fast dying out, and giving place to a newer, fresher, and more vigorous type, while the spirit of Reform, whose healthful influence is so necessary to keep the machinery of the body politic in close harmony with the varying needs of a progressive age, is at last penetrating the musty atmosphere of the Inns of Court, and emancipating the Science of Law from the thraldom of mere case-lore and pleading. People are now beginning to see that to expect a man to become a sound lawyer by simply attending the dingy chambers of a practising Barrister, is about as absurd as to expect one to become a skilled physician by merely accompanying a medical practitioner on his daily rounds, without having any knowledge of the property of drugs or of the proper diagnosis of different diseases, or a skilful surgeon by simply witnessing a series of operations in the theatre of a hospital without any knowledge of the anatomy of the human frame. As the destructive blows of the mason's hammer are daily demolishing the most ancient of these dingy chambers, so the old system which was historically connected with them is rapidly decaying with the crumbling atoms of brick and mortar, which once gave it a "local habitation." It is now acknowledged in most quarters that the Science of Law is no more to be acquired in a purely empirical fashion than that of Medicine or Surgery. Each requires in its own sphere a more or less lengthened period of theoretical or scientific study, in order to prepare the student for the future practice of his profession. Most important and even indispensable as an adjunct, when following, as it should, upon a previous course of preliminary study, a practical training when divorced from the latter produces a mere empirist, a superficial *Praktiker*, whose knowledge does not go beyond the four corners of a precedent, to apply which to the case before him he often violates every principle of common sense and every rule of grammatical construction. That many eminent men belonged to the old system, who were well versed in the Science of Jurisprudence as well as deeply read in the actual Law, may be readily conceded; but an Eldon, a Mansfield, an Erskine, a Lushington, a Phillimore, a Westbury, and a Cockburn were not men of an ordinary type. They owed their pre-eminence not to the dry and mouldy system under which they had been ushered into the profession, but to their own brilliant attainments,

which would have secured them success in any path of life, as well as to a patient and constant study of other systems of Law, especially that of Rome. On the other hand, it was through the hollowness and superficiality of the old legal training that minds like Macaulay's, thirsting not only for the results of knowledge but for a grasp of the principles upon which those results were obtained, were disgusted from persevering in a profession which they would have adorned with their learning and eloquence, because, as it was then regulated, it offered nothing to attract or to interest a highly cultured and philosophical intellect.

The new departure to which we have alluded has of course created a demand for a class of Legal Literature very different from the ordinary text-books which were formerly seen on the shelves of a practising Barrister's library; and it is particularly fitting that Law Professors at the great Universities of the Kingdom should show a proper appreciation of the spirit of the times, by displaying a praiseworthy activity in supplying this demand with works which combine a philosophical as well as a practical treatment of the subjects to which they relate. Having ourselves, for years past, consistently advocated a higher and more scientific study of the Law, we have not failed to give a hearty welcome to any book which was calculated to further this end. It is, however, particularly gratifying to us to extend this welcome to a third edition of Dr. Markby's excellent treatise on *The Elements of Law*, as its learned author is well known to readers of this *Review* by his valuable articles on *Law and Fact*, *German Jurists and Roman Law*, *Legal Fictions*, *&c.*, most of which, we are glad to notice, he has utilised in the present edition of his *Elements*. While unable, on grounds of space, to enter into any detailed criticism of the later editions of so well-established a work, except in so far as alterations in the text or the contrary views of other and more recent writers on the same subject call for remark, we propose on the present occasion simply to notice a few among the many debateable points which Dr. Markby has discussed in his present recension.

We observe, in the first place, that Dr. Markby falls foul of Mr. Herbert Spencer's theory of "equal freedom," which, carried to its logical fulness, is no doubt open to some of the grave objections which our author levels against it. But, when Dr. Markby denounces the proposition that "it is impossible to discover any mode in which land can become private property"

as a "monstrous doctrine," we doubt whether some confusion of language has not been at work here. Would Dr. Markby really contend that land can be regarded as *private* property in the same complete sense as a watch, a horse, or a carriage? If so, upon what principle would he rest the interference by the Legislature, as evidenced by the Laws relating to the taking up of land for public purposes, or by such Acts as the Irish Land Acts, and in India by the various Acts which deal with the Settlement and Cultivation of the land? These Acts, no doubt, recognise the existence of certain *rights* in land as being vested in private persons, but they also emphatically enforce the principle that, as regards land, the State, too, has an interest which may not always coincide with the personal interests of the occupier, and, when these interests conflict, the private must yield to the public—if, for no other reason, on the strength of that very principle of Utility, which Dr. Markby himself recognises as the only true guide in all such matters. We are in more accord with our author when he describes the so-called Moral Law as based simply upon the common experience of mankind, and representing that which is generally accepted. Locke was the first (in 1690) to maintain the negative proposition that what we are wont to call "moral principles" were not innate in man's nature, but he did not enquire, and it was not necessary for his immediate purpose to prove, how and where man obtained a knowledge of those principles. Later philosophers, while they admitted like Kant, Locke's fundamental proposition, still spoke vaguely of a *moral instinct*, *innate ideas*, *natural truths* (*Sittlicher Trieb*, *angeborne Ideen*, *natürliche Wahrheiten*), and the like, which have been perpetuated to the present day. Thus Lotze speaks of "an uneradicable germ of good being innate in the human conscience," while Hugo Sommer asserts that "conscience is the only true *à priori* foundation of all morality." But these are mere turns of expression, phrases which have a certain charm about them, as elevating man's notion of himself, but which have no reality. It was not conscience that taught man it was wrong to kill his neighbour or to steal his property—but experience, which showed him that no community could subsist where life and property were not secure. And thus, too, it is that all our legal principles, every institution in our law, owes its origin to practical motives, and is based on historical experience. The great truth that *history* and not *nature* is the source of all our moral perceptions

is the keynote of Ihering's great work, *Der Zweck im Recht*, and the circumstance that Dr. Markby recognises the origin of the "moral law" to rest on experience, is only one of many traces which are observable in his work of the influence of German thought upon his own writings.

In Section 263, Dr. Markby deals with the effect of error in Criminal cases, and here again we find some difficulty in following him. He contends that when criminals are told that though they may excuse themselves by errors of fact, they cannot set up as an excuse an error of law, this statement is generally speaking not true; and he then proceeds to argue that the intention to break the law is, in most cases, wholly immaterial, for "a man is not punished for breaking the law, but for doing an act which is harmful." Now it seems to us that this language is misleading. When the law expressly declares that a certain act is punishable, it is no excuse to say that the person who committed it had no evil intention, and it would be equally unavailing to urge ignorance of the law. The punishment is awarded in such a case for doing an act which the Legislature has thought fit to pronounce to be penal. But, on the other hand, an act may be harmful in its consequences and may give rise to a civil action for damages, and yet it may not be penal. It can only assume the latter character if the Criminal Law has attached a penalty to its commission. The doer, therefore, is punished *not* because the act is *harmful*, but because he has *broken the law*, which is exactly the reverse of the proposition laid down by our author. Then again, the matter cannot be said to be improved by the further statement that "when an intention to break the law is an element in the offence, as in most cases of larceny, *ignorance of the law can be successfully pleaded*." This will surely strike most readers as an astounding statement. What is probably meant is, that in cases of the nature alluded to, where a dishonest or criminal intent forms an essential element in the offence, the existence of *such an intention* must be proved like any other question of fact. But a student, reading the whole Section, would undoubtedly, if left to himself, form a very confused notion of what was the true effect of error in Criminal cases, and we fear that a Judge of Assize would rudely shake his faith in the exposition he had learnt from that Section if he hoped at a later period in his career to get off a client who was charged with larceny by merely advancing a plea of error of law on the part

of the latter. As regards the effect of error in the application of a clear principle of law to facts which are also clear, Dr. Markby does not express any opinion of his own, and he even doubts whether the case is possible, although Jurists like Savigny and Unger are agreed that it is so. For our own part, we have no difficulty in recognising the existence of a doubt as to the application of a particular rule of law to a given state of facts as quite within the range of possibility; and we think that the true way to resolve such a doubt is to follow the rule recognised by the American Courts, that where the party has exercised his choice and deliberation, the error cannot be pleaded as an excuse.

Want of space prevents us at present from discussing other points raised in this interesting work, but we are glad to see that Dr. Markby has somewhat modified his criticism of Story's remarks on the Roman law of pledge. Story may have wrongly translated the Latin adverb *proprie* by the English *generally*, but if so, the text of Gaius (§ 2 D. 50, 16) becomes more explicit that in his time it was thought by some (and apparently he was of the same opinion himself) that only moveables capable of manual transfer (*res quæ manu traduntur*) were fit subjects of *pignus*. Story's statement, therefore, that "nothing but what was capable of delivery to the pledgee was deemed to be the proper subject of pledge," to which grave objection was taken in Section 498 of Dr. Markby's Supplement to his Second Edition, published in 1875, but which is not repeated in Section 435 of the present Edition, was, after all, based on no mean authority. No doubt, in the later Law the distinction alluded to by Gaius was not preserved, and it was afterwards recognised that anything which could be the object of sale could also be the object of a pledge. But originally, despite the false derivation of *pignus* from *pugnus*, given by Gaius, we may safely rely on his statement, *pignus proprie rei mobilis constitui*. On the whole, this Edition shows that the author has not hesitated to reconsider his positions in the original text, but there are a few instances of careless writing which have evidently escaped Dr. Markby's eye. For instance, at page 385, note 2, referring to a decision of the Privy Council on the subject of Hindu Wills, we find him writing: "The Privy Council there *describes* a will, and *say*," &c. Again, on page 423, § 860, the relative *who* is awkwardly used, and, as the sentence stands, would (*stricto sensu*) refer to the French Code, instead of referring, as intended, to the Judge who

acts under it. It may be useful to the reader to note that the reference to Section 546, under the heading *Zemindars*, in the Index, is a misprint for 346. We take leave of Dr. Markby's *Elements*, with the feeling that, on the whole, it is exactly the sort of book which a student should take as a lantern to guide him through the *selva oscura* of Jurisprudence.

A Systematic and Historical Exposition of the Roman Law arranged in the order of a Code. By W. A. HUNTER, M.A., LL.D., of the Middle Temple, Barrister-at-Law. Second Edition. W. Maxwell and Son. 1885.

We welcome with sincere pleasure the new edition of Dr. Hunter's elaborate Treatise, as a proof that there is really in our country a growing demand for something more than mere cram or pass-books on that particular branch of Jurisprudence to which it relates, and which forms so important a part of a proper legal education, deserving both the "study and reverence of English lawyers." We accept it as a silent but eloquent protest against the superficial knowledge that is now required of it as a Pass subject in the Bar Examination, and which, it has been rightly enough said, "can have no direct value to the student in his after career." (Ball's *Student's Guide to the Bar*, p. 27). Under the existing rules the Roman Law part of the examination can be taken up separately, after the student has kept four terms, and the general practice is to get it over as soon as possible, and then cast Roman Law aside for ever. What possible benefit the extremely slight knowledge thus obtained of Roman Law can be expected to procure, is one of those difficult problems connected with legal education in this country that cannot be solved without a psychological analysis, of the mysterious workings of the minds of the learned members of the Council of Legal Education, for which we have neither the time nor the space at our disposal. Books like Dr. Hunter's, however, supply to the private student the means of a deeper knowledge, which cannot fail to produce good value to him in his future career by training his mind on a scientific basis, and introducing him to the accumulated wisdom of the keenest and most cultivated minds that ever animated the human frame. We might, indeed, have wished that the learned author had adopted

an arrangement for his work more in accordance with the Institutional Treatises of German Jurists, such, for instance, as Puchta's *Cursus*, which seems better calculated to introduce the student by progressive steps to a scientific course of study of his subject than the highly artificial arrangement adopted by Professor Hunter of—(I.) Definition; (II.) Rights and Duties; (III.) Investitive Facts; (IV.) Divestitive Facts; (V.) Transvestitive Facts; (VI.) Remedies. We quite agree with our author that contempt of the old-fashioned pack-horse is not necessarily a sign of critical wisdom; and for that reason we cannot but regret that he should have despised the convenient classification of the Institutional writers, which was ready to hand, in order to elaborate the much more complicated, if original, form of exposition which he has adopted. It must not be forgotten that the order of development of Juridical ideas in the history of a people must stand in an inverse relation to the order in which a fully developed system is taught to students in a subsequent age. Thus amongst nearly all nations the order of development is practically the same as that which Dr. Hunter rightly attributes to the Romans, *viz.*, *Action*, *Obligation*, *Jus*. But no scientific exposition of Law could proceed at the present day on this basis. Having, in the intervening course of centuries that have numbered themselves with the past since the publication of the XII. Tables, acquired a clear notion of *right*, we now naturally proceed from the basis of that *right* to the *obligation* that arises out of it, and from the latter to the *action*, which protects and enforces it under the sanction of the Political power. And for the purpose of exhibiting this order of exposition in its clearest light, a preliminary chapter on the history of *Jus*, in the particular system under investigation, is essential. But one defect of Dr. Hunter's original treatment of his subject was that, as the work was first published, this necessary and important introduction was wanting. This *lacuna*, we are glad to see, has now been supplied by the pen of Professor Murison, who has written a concise but able history of Roman Law, which occupies the first 121 pages of the work. We have no hesitation in saying that the value of Dr. Hunter's book is distinctly increased by this excellent introduction, in which Professor Murison traces the history of Roman Law through its various stages under the rule of the Kings, the Republic, and the Empire. Unfortunately our space will not permit of our examining either

this historical introduction, or the main part of Dr. Hunter's work in detail, but there are a few points on which we would offer some observations. Speaking, for instance, of the early Republican institutions, Professor Murison refers to the Criminal Jurisdiction exercised by Consuls and the *Comitia Centuriata* in these words: "As Judges, the Consuls administered justice, both in civil and criminal cases, to patricians and plebeians equally, either in person or through delegates. *But in capital cases, while plebeians were tried by the Consuls, patricians were tried before the Comitia Centuriata.*" The Professor is here dealing with the Roman Law prior to the codification of the Twelve Tables, and although his statement may receive support from some purely historical writers, the accuracy of the words we have italicised is open to question. Professor Murison is quite right in referring to the criminal jurisdiction of the Consuls as an existing institution at the period referred to, for no law prior to the Twelve Tables, nor that codified law itself, abolished the jurisdiction in criminal matters which the Consuls had inherited from the former Kings, as representing the supreme power in the State. The contrary view taken by Eichler, Walter, Becker-Marquardt, and Lange, on the strength of the text *de capite civis nisi maximo comitiatu ne ferunto*, has been successfully controverted by Voigt, one of the most recent writers on the Twelve Tables (*Vide* Vol. I., sec. 68 A., page 660—665), with whose work, although published in 1883, Professor Murison does not appear to be familiar. But the ascription of a distinct original criminal jurisdiction to the *Comitia Centuriata* over patricians as distinguished from plebeians, at a period commencing with the expulsion of the Kings, is questionable. Under the Kings neither the *Comitia Curiata* nor the *Comitia Centuriata* exercised any *original* criminal jurisdiction; but patricians had the right of appeal to the former assembly, until Servius Tullius remodelled the Constitution and transferred this appellate jurisdiction to the new *Comitia Centuriata*, which could then be invoked by both patricians and plebeians. It was not apparently till A.U.C. 245 that the latter Assembly acquired any *original* jurisdiction in criminal matters, when the *lex Valeria Publicola* of that year invested it with power to try persons who were charged with a particular offence known as *adfectatio regni*, *i.e.*, an attempt to obtain regal power, the prosecution of which was entrusted to the *quæstores parricidii*. This jurisdiction was no doubt gradually extended by the last-named officials, who

sought by this means to enhance their own power, and thus in A.U.C. 295-296 we find the Quæstors of those years prosecuting M. Volscius Fictor for *falsum testimonium*. But during this period, and down to the enactment of the Twelve Tables, there is nothing to show that, except in the cases covered by the *lex Valeria Publicolæ*, the Consul (or Prætor as he was originally called), may not have exercised concurrent jurisdiction in all other criminal offences, irrespective of the class to which the accused belonged. Those who would pursue the subject further will find it treated in secs. 68-69 of Voigt's *Die XII. Tafeln*. Again, with reference to the appointment of Consuls, Professor Murison remarks that they were at first of patrician rank, and that till B.C. 366 they were *always* patricians—a statement which requires to be qualified by a single important exception. For of course the Professor does not need to be reminded of the fact that one of the first two Consuls (or more correctly speaking Prætors), L. Junius Brutus, was a plebeian, though no doubt it was not till the Licinian law that the necessity of a plebeian's nomination to one of the two annual consulships was legally ordained. Another point in regard to which we wish to make a passing suggestion is the substance of the Twelve Tables, given by Professor Murison at page 17. Of course, as Bruns points out, the construction at the present day of the *lex Decemviralis* is a matter more or less of arbitrary choice, as the probable order of the original Tables is only to be inferred from various statements occurring in juristical and classical writers, and the literature on the subject in modern times is considerable. But perhaps the best attempt that has hitherto been made to restore the scattered fragments to something like their original order is to be found in the first volume of Voigt's work (*Die XII. Tafeln*), above mentioned, at pages 693—737, in which the learned author has availed himself of every known source of information, and has so exhibited the result of his labours that one can see at a glance what portion of these fragments contain the *ipsissima verba* of the original *lex Decemviralis*, as evidenced from quotations occurring in the law sources, and what portions contain merely the substance of that law, as derived from juristical and classical authors. We would suggest to Professor Murison to utilise Voigt's labours in revising his historical introduction for a future edition of Dr. Hunter's Work, or in the event of his enlarging the essay itself, with the view of independent publication.

Turning now to Dr. Hunter's own portion of the work, we have little to add by way of detailed criticism to the general opinion we have expressed above, as well as on our first acquaintance with the book. His new chapter on Possession is excellent, and his criticism of the views of other writers, when he happens to differ from them, shows at once command of his subject and considerable dialectical skill. As an instance of the latter we might refer to his note on the "Derivative Theories of the Stipulation," where he combats the view that *nexum* was the earliest contract known to the Romans, and that *stipulatio* and *expensilatio* were later offshoots from it. But, in speaking of the *nexum*, it seems that Dr. Hunter labours under the impression held by many other English writers that it was always connected with transactions *per æs et libram*. Recent German criticism has, however, established, as we think, that this expression was not derived from the most ancient period of which a knowledge has descended to us.

It would seem that, amongst the ancient Romans as amongst the Vedic Indian tribes and the Homeric Greeks, there were two earlier periods, when commerce was regulated (1) by exchange pure and simple, or (2) by a system of valuation founded on an exchange of commodities. It is only as a third phase of development that metal appears as a means of payment, and, even then, in its initial stage, it is as the *æs rude* and not the *æs grave*. The original expression for *nexum* was therefore *per libram agere* or *per libram obligari*, and not *per æs et libram*, and it embraced in the ancient law the three forms of transaction known as *mancipatio, nexi datio*, and *nexi solutio*. The object of the *nexum* might be, even at the period of the XII. Tables, any ponderable thing, and not simply *æs*. It is apparently by overlooking this difference in the earlier and later terminology that Dr. Hunter, misled partly by what Gaius says of a release *per æs et libram*, infers confidently that the *nexus* or *nexum* "applied to something short of the class of fungible things." In point of fact, however, the *nexum* included objects such as corn, fruit, fishes, and other ponderable things which would fall under the class of *res quæ in genere suo functionem recipiunt per solutionem (magis) quam specie.** With these brief remarks, we once more cordially recommend the present edition of Dr. Hunter's valuable work.

* Voigt, *Die XII. Tafeln*, Vol. I., 197; Vol. II., p. 483.

Principles of the Law of Torts. By F. T. PIGGOTT, M.A., LL.M., of the Middle Temple, Barrister-at-Law. W. Clowes and Sons, Lim. 1885.

The Law of Torts, it must be confessed, is a subject which does not owe much to the elucidation of English text-writers. It has, no doubt, been treated in a fragmentary way in several works, but, with the exception of Addison, whose last edition by Mr. Justice Cave brings the work down to 1879, no other professional writer has attempted to deal with it from a general stand-point, that is to say, to formulate the leading Principles which underlie the subject as a whole, and to follow them through the various branches into which it divides itself. That there are certain general principles of this kind will not be denied. Indeed the negation of this proposition would involve the law relating to Torts in a simply inextricable confusion. But in truth the subject is so vast and so complex, embracing in a wide sense every invasion of a legal right, that the exact limits for the operation of individual rules are not easily definable, still less the exceptions which have been recognised in the application of those principles. Few writers, therefore, have hitherto been tempted to grapple with the difficulties which such a subject must necessarily present. Addison no doubt entered in a very painstaking spirit upon the task, but his work, comprehensive as it is in many respects, is nevertheless, wanting in method and sound classification, and it is besides too bulky for the use of students. A far simpler work is Collett's *Law of Torts.* The author was an Indian Judge, but as his work was professedly of an elementary character, it was not exactly suited to advanced students. In America, several works deal more or less with the subject, notably Bigelow's *Leading Cases*, of which Mr. Ball has produced an English edition, and Mr. Edward P. Weeks has written an exceedingly interesting treatise on the particular doctrine of *Damnum absque injuria* (San Francisco. Sumner Whitney and Co.), which may be said to reflect the negative side of the Law of Torts just as the maxim *ubi Jus ibi remedium* mirrors its positive side. Indeed, it seems to us that these two maxims practically form the foundation upon which the whole Law of Torts may be safely constructed, the one embracing all the known cases of invasions of right for which the law provides a legal remedy, and the other that large class of exceptional cases where in truth a damage—perhaps of a

serious nature—has been sustained, but which the law refuses to regard as arising out of a legal *injuria*, or an act which is wrongful in the eye of the law. This latter maxim, however, finds little or no illustration in English text-books, although it is obvious that it must bear a very close relation to the former, for when we have once comprehended what is *not* an *injuria* we have helped largely to clear the way for a right determination, by a process of elimination, of what the law does regard as *injuriæ*. In other words, the maxim teaches us the important qualification of the general rule, *ubi Jus ibi remedium*, that damage by itself does not create a *jus* to which a *remedium* is necessarily attached, and that the further element of a legal *injuria* must be superadded to complete the full sense of the expression. Again it is conceivable there may be cases in which an *injuria*, or wrong in a purely technical sense may exist, but owing to some incompleteness in the plaintiff's right the law does not permit him to allege that he has been damnified. These are cases which fall under the classification of *injuria sine damno*. In order, therefore, to deal exhaustively with the Law of Torts, the subject requires to be considered under a threefold aspect. In the first place, we should consider those cases, and the principles by which they are governed, in which the essential elements of *injuria* and *damnum* are complete; next those in which the former element is present—that is to say, where an act which the law ordinarily regards as wrongful has been committed—but the latter is absent; and lastly, those in which a *damnum* has been incurred, but it cannot be proved that it has arisen out of a wrongful act or *injuria*. The first part of such a work would of course again have to be subdivided according to some convenient form of classification, either with reference to whether the *injuria* complained of affects the *person*, *reputation*, or *property*, or with reference to the liability for the same, judged of from the plaintiff's or the defendant's point of view. By this arrangement the whole subject could be systematically and gradually developed, and the work would comprise not only the positive principles underlying the Law of Torts generally, but also, if we may use the expression, the exceptions to those principles considered under their appropriate heads of *injuria sine damno* and *damnum absque injuria*. As we have remarked above, Addison's work does not fulfil these conditions, while its size and imperfect arrangement serve to deter students from

mastering its varied contents. In India the project has long been formed of codifying the Law of Torts within the limits of a single enactment, but as yet the process of digesting the raw material has not been sufficiently advanced for the measure to assume any final shape. It was a project to which Mr. Whitley Stokes devoted, we believe, much attention, and it is one which the present Legal Member of the Council of the Viceroy has also had in his legislative crucible, ever since he assumed the reins of office. But there is perhaps scarcely any other branch of law which is so difficult of codification as this particular subject, and if, despite these difficulties, the Legislative Council in India, under the guiding hand of its present accomplished Legal Member, is able to do for this branch what the indefatigable labours of Sir James Fitzjames Stephen, and, more especially, of Mr. Whitley Stokes, have already done for the Law of Contracts, Procedure, Bills of Exchange, Transfer of Property, and many other branches of Law, it will only be another example to the British Parliament of what patient industry and technical skill can do to reduce the principles of Law—ranging over however wide and comprehensive a sphere—into a convenient and intelligible shape. Until a greater activity in this direction is displayed at St. Stephen's, it must remain with private members of the Profession to discharge that debt which, according to Francis Bacon, each man owes to his own calling to do something by way of "help and ornament thereto." It is with considerable pleasure, therefore, that we find so indefatigable and laborious a worker as Mr. Pigott taking up the task of writing what we feel sure will meet with acceptance, both as a readable and an instructive treatise on the *Principles of the Law of Torts*. Each writer has naturally his own way of bringing his subject before his readers, and if, on the one hand, we may venture to express a regret, that the work now before us does not proceed upon the exact lines we have sketched above as, in our opinion, the best suited to a proper treatment of the Law of Torts, we can, on the other hand, safely assert that it contains a very lucid exposition of the general principles which govern and constitute that law, while the arrangement of the twelve Chapters, into which it is divided, is at least simple and intelligible. The classification adopted by the author is also a triple one, but of a somewhat different character from that which commends itself to our own mind as the fittest, viz.:—(1) Liability judged by a series

of broad general principles, (2) liability judged of from the plaintiff's point of view, and (3) liability judged of from the defendant's point of view. The first part covers Chapters I.—VI., and comprises enquiries as to the origin of legal rights and duties, the place of commission of a Tort, the effects of death, bankruptcy, and marriage of the tortfeasor or the party injured, the effect of limitation and waiver, as to tortfeasors generally, and as to damage generally. Chapters VII. to IX. are embraced in the second part, which deals with *Mens Rea*, including neligence, fraud and malice; while Chapters X. to XII. are devoted to an examination of particularly named torts, grouped under the three broad heads of injuries to person, injuries to the reputation, and injuries to property. It will thus be seen that the work aims at being comprehensive enough in character, and, so far as we have been able to judge from a necessarily somewhat rapid perusal, the Rules of Law are concisely and soundly stated, conflicting cases, or rather cases which appear to be in conflict, are carefully compared with one another, and only the more important cases are worked into the text. On the whole, therefore, Mr. Piggott's new work will, we believe, prove a useful treatise on a branch of Law which undoubtedly called for fresh representation in the Literature of the Profession.

Mercantile Handbook of the Liabilities of Merchant, Shipowner and Underwriter. By ALEXANDER WILSON, Solicitor. Stevens and Sons. 1883.

This is another of the half-legal, half-practical handbooks of which so many have appeared of late years. Whether the growing fashion of parties conducting their cases in person is owing to the existence of such works may be a question, though, if this be the case, it is not improbable that after a considerable amount of invaluable time has been wasted, the parties concerned will be able to moralise on the truth of the statement of the wise man that "a little knowledge is a dangerous thing." In saying this, however, it is not intended to depreciate the value of such handbooks in general, still less of the one now under consideration in particular.

It is a book which may be of the greatest service to the shipowner and to the shipper, and where it does speak decidedly it is generally accurate, even when at the time of writing no case could be cited in support. A most important instance may now,

for example, be given of the far-reaching proposition that a latent defect in a screwshaft renders a vessel unseaworthy for the purposes of a Bill of Lading from the recent case of the *Glenfruin* (10 P.D. 103), which appears to render some such clause as that given on p. 22 a necessary protection for the shipowner, whilst the cargo-owner and shipowner alike must look to their policies being in such form as to cover this special but not uncommon cause of disaster.

Unfortunately, it is not possible for an individual to lay down what the law is, but only what it may probably be, in a great variety even of the every-day circumstances which occur in the carriage of goods on board ship, and though this book contains at least its share of such conjectural opinions, yet in this respect it also has its uses in moderating the, not improbably erroneous, feeling of security which actuates the mind of a non-professional person when a new question arises impugning what perhaps has been the practice of himself and his father's house for generations. We may remark on one curious illustration of the glorious uncertainty of the law in these matters, in which the *Mercantile Handbook* is almost accidentally correct (judging from the date of the book as given in its preface), in citing the case of *Burdick* v. *Sewell* (10 Q.B.D. 363), at pp. 44 and 98, for the proposition that a transfer of the Bill of Lading, as a pledge or security, does not work such a transfer of the property in the goods mentioned in it as to make the transferee liable under the Bill of Ladings Act. Very shortly afterwards, in April, 1884, the Court of Appeal, though divided, yet by a majority of voices, reversed that decision (13 Q.B.D. 159); but since then, the House of Lords, in December, 1884 (10 App. Cas., 74) has restored the original judgment, and finally established the correctness of the law laid down in Mr. Wilson's handbook.

There appears to be a slight confusion in the author's mind as to the definition of a "ship." He gives a reference to the definition given in the Admiralty Court Act, 1861 (though by a printer's error the reference is incorrect), but not to the Merchant Shipping Act, 1854, which being in the same terms, and that Act having a wider scope, would have been better if a statutory definition were desired, whilst he does not cite the differing definitions given in the Passengers' Act, 1855 (18 and 19 Vict., c. 119), nor in the Seamen's Fund Act, 1851 (14 and 15 Vict., c. 102), nor, what is, perhaps, even more important, the broader, or, as it may be called, dictionary definition given by the Court

of Appeal in the case of the *Mac* (7 P.D. 129). Again, in the immediately following definition of a "steamship," Mr. Wilson gives a case which no doubt contains a definition sufficient for one purpose, but he does not refer to the International Regulations for Preventing Collisions at Sea, nor to other provisions of the Merchant Shipping Acts relating to these ships, wherein if the definition he gives were applied the person applying it would evidently get into trouble.

The effect of the employment or non-employment of a Pilot, whether by compulsion of law or by custom, whether with reference to Bills of Lading or Policies of Insurance, appears to be carefully, correctly, and lucidly stated, and the same remark applies also to the various circumstances under which a collision may happen. In this latter subject, the kernel has been correctly extracted from the judgment of the Court of Appeal in the curious case of the *Chartered Mercantile Bk. of India* v. *Netherlands India Steam Nav. Co.* (10 Q.B.D. 521), which involves nearly every possible point of a collision case. And the table given at pp. 55, 56, showing at a glance the different meaning of each "peril of the sea" in Bills of Lading and Policies of Insurance, is likely to be of great use to those readers for whom the book is principally intended. Where, then, there is so much to praise we may be excused if we draw attention to two points which appear to be omitted. (1.) How far salvage paid by a master of a ship under an agreement binds the cargo owners to contribute as to General Average—the difficulty of which question is remarkably shown by the fact that in the recent case of *Anderson* v. *The Ocean Steamship Co.*, the Divisional Court disagreed with the Judge who tried the case, the Court of Appeal (13 Q.B.D. 651) disagreed with the Divisional Court, and the House of Lords (10 App. Cas., 107) disagreed with all the previous decisions and sent the case down again for a new trial where it is still *sub judice.* (2.) The effect of the Law of the Flag on contracts for carriage by sea. This last point is, perhaps, too extensive to be dealt with in a handbook, but it is one which will become of vital importance if the prognostication of the late Secretary of the Admiralty to his constituents should unfortunately prove true, and in the event of a war, a large quantity of British vessels with their carrying trade should be transferred to foreign neutral flags. It would appear, from the cases on the subject, that where the vessel is *bonâ fide*

foreign, the contract is governed by the Law of the Flag (*Lloyd* v. *Guibert*, L.R. 1 Q.B. 115; the *Gaetano e Maria*, 7 P.D. 137): that when the use of the flag may by an excusable pun be called colourable, the vessel in fact retaining her British ownership, she cannot, in a British Court, derive any advantage from her flag (*Chartered Merc. Bk. of India, &c.* v. *Netherlands India St. Nav. Co.*, 10 Q.B.D. 521).

It may be remarked, in conclusion, that in a work of this sort, intended for lay readers and to be used as a book of reference often in a hurry, a good index is of more importance than a list of cases cited, the use of the latter being mainly to supplement the former in the hands of a professional man, and enable him to see where all the reports of any particular case are to be found. The list of cases in the *Mercantile Handbook*, though full, does not achieve this result, as it gives only the references to the same reports as those in the text, whilst the index might with advantage be somewhat enlarged at the expense of the space occupied by the list of cases.

But at a time when questions of Shipping and Insurance Law occupy,—or would occupy were it not for the still greater questions of peace or war, not yet quite set at rest,—so large a portion of the time of Parliament, we can confidently recommend Mr. Alexander Wilson's *Mercantile Handbook* to those members who wish to obtain information on these important subjects such as shall enable them to take an intelligent interest in the questions on which they are called upon to legislate.

The Factors Acts (1823-77), with an Introduction and Explanatory Notes. By HUGH FREDERICK BOYD, and ARTHUR BEILBY PEARSON, Barristers-at-Law. Stevens and Sons. 1884.

Messrs. Boyd and Pearson, in this work, endeavour to supplement in some sort the work of the late Mr. Benjamin, Q.C., on Sales, recently edited by them. They say, indeed, in their preface, that there is no work dealing exclusively with this branch of the Law; yet, taking it as a part of general Commercial Law, it is, perhaps, more dealt with than any other branch, lying, as it does, on the debateable land between "Sale" and "Pledge" on the one hand, and "Agency" on the other. And, indeed, this book is itself practically a reproduction, in a more convenient form, of the authors' work as it appears in the

third edition of Benjamin on *Sales*, Bk. I., Pt. I., ch. 2, pp. 15-22; and Bk. V., Pt. I., ch. 4, pp. 793-814. It cannot, however, be alleged that there was no need for thus re-casting their work, for valuable as the treatise on *Sales* is, the editors of the last edition were obviously hampered by the obligation imposed upon them of preserving the text of the former edition, and inserting their new matter either in the form of notes or in bracketed portions of the text; and in no portions of the work was the inconvenience felt by the reader greater than in those, referred to above, which deal with the subject of the Factors Acts, because, between the appearance of the second edition in 1873, and the third in 1883, not only had there been important decisions on the law, but also the last and, perhaps, most important of the Factors Acts (40 and 41 Vict., c. 39) had been enacted in 1877. Indeed, the doubt which arises is not whether such a work was needed, but whether it would not have been well to have extended its scope somewhat more, glancing, at all events, at the laws of foreign countries on this most important subject, and that more especially when the authors tell us the work is designed not only for the use of the legal profession, but also for that of the commercial classes. For it is obviously even more important to a British merchant to know how far he is bound by, and liable in respect of, contracts made by his agent or factor abroad, whether made in good faith or in fraud, than to ascertain how far he, when acting as agent or factor, binds under similar circumstances a foreign principal. This is, however, only one branch, and perhaps not the largest branch of the subject, if we adopt the interpretation of the word "Factor" which the authors of this work borrow from Story on *Agency*—that is, "Agents employed to sell goods or merchandise consigned or delivered to them by, or for, their principal for a compensation, commonly called factorage or commission," and which is certainly clearer than any one of the seven definitions given in the Statutes considered, and which are collected on p. 69 of this book.

Messrs. Boyd and Pearson open their volume with an interesting historical sketch of the law, and of the gradual encroachment, at the urgent solicitation of the trading classes, of the doctrines which, as we learn from a Report presented to Parliament (see p. 11) were already in force in France, Portugal, Spain, Italy, Austria, Holland, the Hanse Towns,

Prussia, Denmark, Sweden, and Russia, as well as in the sister kingdom of Scotland, that, so far as personal property is concerned "possession constitutes title," on the strict legal application of the maxim, *Nemo det quod non habet. Nemo plus juris ad alium transferre potest quam ipse haberet:* or, to put the matter in a more homely form, a history of the triumph of the proverb "Possession is nine-tenths of the law," for that is practically the result of the four Acts to which the book relates, so far as concerns the validity of transactions with factors, who may or may not be entitled to the property in the goods themselves, but are held out as having it by the fact of the possession of the property or of the *indicia* of title to it.

The first thing that strikes us is the ever increasing difficulty which our system of legislation causes both in the study and practice, to say nothing of the administration, of the Law. If, when some amendment of any particular branch of the law is demanded, all the statutes already in force were repealed and those sections of them in which no alteration was required were re-enacted, each statute would contain all the necessary law of the subject, whereas the present system, or rather want of system, obliges learned authors to digest several statutes together, and consider whether some provision in a later one does or does not by necessary implication so supersede a former one as to practically repeal it. The authors of the present little book have adopted a very convenient plan to attain this end, namely, whilst printing the whole of the text of the statutes in force at all, making those sections which they deem to be practically repealed appear in italics. But the difficulty is not even by these means always got over, for example, on dealing at p. 15 with section 2 of the Factors Act, 1825, we are told that as regards pledges this section is superseded by s. 17, 5 & 6 Vict., c. 39, the object of which Act is stated in the preamble to be, to put pledges and sales by factors on the same footing, though, in fact, it produces precisely the opposite effect.

The observations on the cases decided under the Acts are very clear, and it is a great advantage that we are given a statement of the actual facts on which each case was decided, and not merely the legal inference which the reporter or the authors have drawn from those facts; and that the book contains the latest cases on the subject of which it treats, is

shown by the reference to *Mildred, Goyeneche & Co.* v. *Maspons*, 8 App. Cas., 874, at p. 30, *n*. But one can hardly consider a Law Book on the Factors Acts complete which contains no reference at all either to the Bills of Lading Act, 1855 (18 & 19 Vict., c. 111), or to the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), so important are those Acts in their bearing on the position, and rights, duties and liabilities of agents and factors that room might have been found for some, at all events, of those provisions in the Appendix, beside the three sections of the Larceny Act, 1861 (24 & 25 Vict., c. 96), which deal more especially with the malpractices of these persons.

The list of Cases cited is full, and is compiled as such lists ought always to be, with references to *all* the published reports; this is work which adds little to the labour of bookmaking, as it can be done by a clerk, or with mutual advantage by a pupil, and it adds immeasurably to the value of the book when it is done, but whilst the list of Cases is deserving of all praise, the Index is somewhat meagre, and neither under the head of "Statutes" in the Index nor in a special Index is there any list of the Statutes referred to, with references to the text, which omission will, we hope, be rectified in a subsequent edition, when the book may appear in a more extended form.

A complete Collection of Practice Statutes, Orders and Rules from 1275 *to* 1885. By ALFRED EMDEN and E. R. PEARCE-EDGCUMBE, Barristers-at-Law. Stevens and Haynes. 1885.

The rage for producing ponderous tomes continues. Nothing but its size will prevent this book attaining that complete success which it deserves. It is too big almost to take into Court, certainly too unwieldy for daily use in Chambers. Its bulk might have been considerably reduced by the omission of the Judicature Acts and Orders, and the Bankruptcy Act. Everybody has a copy of these Acts, but as to what other practice Statutes still remain in force, few people are well informed. We wonder, for example, how many in the profession know how much, if any portion, of the Common Law Procedure Acts is operative at the present time. In this respect, the learned authors have done invaluable service. Their collection in one volume of a number of obscure Statutes, and their notes upon them, will be of great assistance to every practising lawyer. But we would strongly recommend them, in future editions, to

omit the Judicature Acts (there are over a dozen editions already in the market) and the Bankruptcy Act (there are no less than thirty-three editions now to be procured), thereby reducing the bulk of what, in all other respects, is an extremely useful publication.

Appeals from the Convictions and Orders of Justices. By JOHN G. TROTTER, Assistant Clerk to the Justices, Guildhall. Wm. Clowes and Sons. 1884.

In this work, Mr. Trotter deals with the important subject of appeals from convictions and orders of Justices to the Quarter Sessions. This branch of the law is intricate, and is contained in a large number of Acts of Parliament, therefore any book which would help to make clear that which is entangled and obscure should be welcome. The author, from his position, has had ample experience of the law with which he deals, and he has produced a short treatise which, no doubt, will be found useful by those who have recourse to it. There are four principal chapters, dealing with the procedure before Courts of Summary Jurisdiction; the procedure at Quarter Sessions upon the hearing of appeals; enforcing the judgment of the sessions; and stating a case for the opinion of the superior Court on a point of law. There is also an appendix of statutes in alphabetical order, dealing with the summary jurisdiction of magistrates, with the appeal clause (if any,) giving a right of appeal to Quarter Sessions. A considerable number of cases bearing on the subject have been diligently collected and put together. We wish we could speak more favourably of the book, as some trouble must have been spent over its production; unfortunately, its naturally dry subject-matter has been made more uninviting by the bald way in which it has been treated. More care should have been expended in making the sentences follow one another in natural sequence; they are at present somewhat like a disjointed series of compressed head-notes, and the grammar in some places is very slipshod. These are faults which may be remedied in a future edition. The publishers have done their share of the book very well.

The Law relating to Works of Literature and Art, embracing the Law of Copyright and the Law of Libel. By JOHN SHORTT, LL.B., Barrister-at-Law. Second edition. Reeves and Turner, 1884.

The Newspaper Libel and Registration Act, 1881. By GEORGE ELLIOTT, Barrister-at-Law. Stevens and Haynes. 1884.

The former of these two books is the second edition of Mr. Shortt's treatise on the Law relating to works of Literature and Art, that is, the Law of Copyright and Libel. There is, indeed, no necessary or even *primâ facie* connection between Copyright and Libel, and it is only because Libel requires writing or its equivalent, that it can be discussed under the head of Literature. The question of Copyright is one of great importance, more especially from the International point of view; because the keenness of competition to derive advantages from the publication of a work likely to have a large sale drives publishers in foreign countries to acts of literary piracy; and the ingenuity of International Jurists has been of late much exercised in devising conditions which shall protect authors and their legitimate privileges. We notice. however, that the learned author does not touch upon this vexed question either in the chapter on International Copyright, or in that on American Copyright. Mr. Shortt has taken pains to incorporate all the recent decisions on the subject of his treatise. The full and thorough manner in which his task has been performed renders it a very valuable text-book for the use of the practitioner. A large portion of the book is necessarily devoted to the consideration of the law of Libel as affecting newspapers, a question the importance of which increases rather than diminishes, but which yet remains to be placed on a proper basis, though an attempt in this direction has been made by the Newspaper Libel and Registration Act, 1881.

This Act of Parliament has been separately edited and annotated by Mr. George Elliott, in a neat little *brochure*, upon which he has expended much care. His introductory chapter on the law of Newspaper Libel, prior to the Act of 1881, is most readable and interesting. His notes to the sections are terse, but clear, and throw light on the meaning of the sections to which they are appended. His accuracy is tested by the fact that he was of opinion that the decision of the Divisional Court in *Reg.* v. *Yates*, that section 3 of the Act of 1881, did not take away the jurisdiction of the Queen's Bench Division over criminal informations for libel, was right; and the Court of Appeal has recently so decided by affirming the judgment of the Court below. Mr. Shortt records the judgment of the Queen's Bench Division in this case without comment. We

congratulate Mr. Elliott on producing this distinctly good little handbook. The utility of both the works before us is much enhanced by the full and accurate index attached to each.

Reports in Chambers (Queen's Bench Division) from October, 1883, *to April*, 1884. By ADAM H. BITTLESTON, Barrister-at-Law. Wm. Clowes and Sons. 1884.

When the Rules of the Supreme Court, 1883, became operative, Mr. Justice Field was requested by the Lord Chancellor to sit at Chambers as Judge, for the first few months, for the purpose of settling the new Practice arising under them, thus insuring a uniformity in the decisions. The volume before us is a collection by Mr. Bittleston of the more important cases arising on the construction of these rules, decided by Mr. Justice Field and Mr. Justice Mathew, who, in the former Judge's absence, took his place at Chambers. Mr. Bittleston, who is no stranger to this class of work, has performed his task extremely well. The cases have been aptly chosen, and their importance is enhanced by the fact of their revision by the learned Judges who decided them; a few have been overruled (such as *Crosland* v. *Routledge*, p. 150, and *Jacobs* v. *Brown, Godsell, third party*, p. 230), but others have been affirmed by the Divisional Courts and the Court of Appeal. The contents of the book are easy of reference; the arrangement is threefold; the principal one is alphabetical according to the subject-matter of the cases; these are also arranged under the orders and rules in their numerical sequence, and a Table of Cases is given. Mr. Bittleston's collection of cases should prove useful to the Profession. In the matter of style and printing the book leaves nothing to be desired.

Men at the Bar, a Biographical Hand-list of the Members of the various Inns of Court. By JOSEPH FOSTER, author of the "British Peerage and Baronetage," &c. Reeves and Turner. 1885.

An Hour in the Temple, London. By JOHN C. H. FLOOD, Barrister-at-Law. Diprose and Bateman. 1884.

The study of the Law requires of necessity men to study it, and dwelling-places wherein those men may pursue their studies.

These adjuncts being of the most weighty consideration, we are pleased to see the two works now before us. In *Men at the Bar*, Mr. Foster has supplied a great desideratum. It is obvious that, as time passes away, it becomes more and more difficult to ascertain facts concerning practitioners of the Law, which have been well known, and still are known, but which would soon cease to be had in remembrance if some such work as that of Mr. Foster did not exist. A careful examination of his pages show us that Mr. Foster has achieved a considerable amount of success in carrying out a very difficult task. It is, however, a pity that his inquiries have not enabled him to fill in the many *lacunæ* relating to day, month, and year which occur in his pages, as, the type not being closed up in such places, a general air of incompleteness is given to the book. We observe that Mr. Pye is described as having been Rector of Clifton Campville from 1851 to 1872, whereas he ceased to be Rector of that place in 1868. Again, Mr. Richard Ward, B.A., of Lincoln's Inn, appears to be credited with having allied himself with the wife of another man, an assertion which is evidently unfounded. Lord Bramwell is reported to have married a second time, in 1861; but Mr. Foster has apparently forgotten to supply us with the lady's maiden name. Mr. Corney Grain, well known in London society, receives from Mr. Foster the somewhat singular brevet rank of "public entertainer." These are points to which Mr. Foster's attention may with advantage be given in the preparation of a future edition.

Mr. Flood's work is of a far less ambitious character. It is written in a plain and easy style, and, on the whole, may be taken as a trustworthy exponent of the modern mysteries of the Temple. We cannot say that we agree with Mr. Flood's assertion (p. 4) that locality determines whether a place of business should be termed "chambers" or an "office." We think that locality has nothing whatsoever to say to it. The place where a barrister, serjeant, or judge transacts private business, whether it be in the Temple or in a provincial town, is termed his "chambers." The place where a solicitor pursues what is, in the eye of the Law, his "trade," is called an "office," whether it be situate in the Temple or Bedford Row.

THE

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I.—THE LAND LAWS OF INDIA.

II. Bengal Tenures.

WE have seen that the *zemindar*, in the sense of the superior proprietor of the land in Bengal, was a creature of the Permanent Settlement, and we have seen also the evil results that followed from the omission to define, in the course of that ill-judged measure, the relation in which this individual stood to the actual cultivator of the soil. The notion that the landholders and cultivators (an over-numerous class), if left to themselves, would soon adjust their own differences, and arrive at a satisfactory settlement of their respective rights, was based, in fact, on the false assumption that there was a reciprocity between the two classes, and that they could or would deal with each other on an equal footing. Such an assumption must, of course, underlie the principle of Freedom of Contract, which, as an abstract rule, is undeniably just, and ought not to be departed from except under very special circumstances. The English Law itself, in common with most other known Systems, at once affirms the principle and the exceptions to it, founded on such peculiar relations as those of guardian and ward, parent and child, physician and patient, solicitor and client, husband and wife, master and servant, where one of the parties is presumably under the influence of the other, and is not, therefore, in the full sense of the expression, a free agent. So in Bengal, at the time of the Permanent Settlement, the condition of things was

such that the cultivator was not in a position to contract on an equal footing with the individual whom we had recognised as the proprietor of the soil, and who, under the former native Governments, had exercised large semi-official powers as the collector of revenue for the State. The *zemindar*, as revenue collector, had thus acquired a power and influence in the village or other territorial area within which he exercised his functions, which made his will more or less irresistible, and rendered the cultivator a very unequal opponent in a "battle for right." To expect, therefore, that the *zemindars* would conduct themselves as the Court of Directors were simple enough to express a hope they would, "with good faith and moderation towards their dependent *talukdars* and *raiyats*," and that the tenants, if left unfettered to deal with their landlords, would obtain a just recognition of their rights from the latter, in the then state of our Courts,* the corruption and maladministration of which, under the guidance of native *Muftis* and *Kazis*, were said to be notorious, was to expect the Ethiopian to change his skin. Nor was there any force in the stock argument upon which the abstention to define the tenant's rights was generally defended, namely, "that as the *zemindar* and his tenants have reciprocal wants, their mutual necessities must drive them to an amicable adjustment." The weakness of this argument, based again on a false assumption, was well exposed by Lord Moira in a Minute of the 21st September, 1815, where, referring to it, he observes as follows: "The reciprocity is not, however, so clear. The *zemindar* certainly cannot do without tenants; but he wants them upon his own terms, and he knows that, if he can get rid of the hereditary proprietors, who claim a right to terms

* See Sir J. F. Stephen's *Nuncomar and Impey*, Vol. II., pp. 181, 222-224, an admirable work, calculated to throw a completely fresh light on a chapter of Indian history which the hasty judgment of Macaulay completely misrepresented.

independent of what he may vouchsafe to give, he will obtain the means of substituting men of his own." But the initial error of leaving the helpless cultivator to obtain by means of contract a just return for his labour, and a confirmation of such rights or privileges as his ancestors may have enjoyed, was carried still further by the power which was conceded to the *zemindar* of introducing middle-men between him and the actual cultivator of the soil. It was notified by order of the Directors "to the *zemindars*, independent *talukdars* and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift or otherwise, their *proprietary* rights, in the *whole* or *any portion* of their respective estates, without applying to Government for its sanction to the transfer." And by sec. 52 of Reg. VIII. of 1793, the *zemindar* or actual proprietor is empowered "to let the remaining lands of his *zemindari* or estate (*i.e.*, lands held by *mukarraridars*, *istemrardars* and dependent *talukdars*, referred to in secs. 49 and 51 of the Regulation*) under the prescribed restrictions in whatever manner he may think proper. The *zemindars* were not slow to take advantage of these extensive powers of alienation and transfer; and although, as I have already pointed out in my former Paper, another regulation (XLIV., of 1793), passed on the same day as Reg. VIII. of that year, restricted the period for which a proprietor might grant a lease or farm to ten years, the law was openly violated, so much so, that Reg. VIII. of 1819, which finally abolished the restriction, declared the practice of granting *taluks* and other leases at a fixed rent in perpetuity had become common with the *zemindars* of Bengal. And what the *zemindar* felt himself entitled to do, the farmer and *talukdar*, as his representative,

* *Vide* Field's *Landholding and Relation of Landlord and Tenant*, p. 520, a book from which I have derived much valuable information, and to which I desire to make this general acknowledgment.

also claimed to assert. So that, in practice, there was not only the *ijaradar* and *durijaradar*, but also the *talukdar* and the *darpatni talukdar*. Sometimes also the latter transferred his interest to another person, who was then styled the *se-patnidar*, and there was nothing to prevent the principle of sub-leasing being carried even several degrees lower down. It is curious, therefore, to notice that while in England legislation distinctly restrained sub-infeudation as early as the year 1290, the effect of the Code of 1793 and more particularly of the Patni Regulation (VIII. of 1819) was to sanction in India a diametrically opposite practice. Nor was the Indian farmer untrue to the traditions of his class, whether preserved in Classical or Oriental history, while the *talukdar*, leech as he was (*Arab.* ALAK), justified his name by sucking the very life-blood out of the *raiyats* who held under him. The main difference, however, between the farmer of revenues of British creation, and the *Mustajir* of the Muhammadan period, or the *publicanus* of the Roman Empire, was, that while the latter had merely to collect the revenue and taxes due to the State without interfering directly with the arrangements for the cultivation of the soil, the former was treated as a lessee, and was permitted to settle or evict tenants, and to raise their rents. But the two types agreed in certain distinguishing traits of character, in the rapacity, the unscrupulousness, and the oppression, which each exhibited and practised in common, and both were, and the later Indian prototype still is, feared and hated by the unfortunate peasants who were or are subject to their or his control—which means uncertain rents, uncertain tenure, unlimited dues and agricultural services, and—certain poverty for themselves and their families. It is singular, however, that the evils of this unrestricted power of sub-letting, as applied to India and on the part of persons who are not directly concerned with the *cultivation* of the land, were so little understood in England,

that so late as 1862 we find the Secretary of State for India, in a Despatch of the 9th July of that year, expressing his conviction that "it is most desirable that facilities should be given for the gradual growth of a *middle-class* connected with the land, *without dispossessing the peasant proprietors and occupiers.*" Unfortunately, however, the introduction of middlemen in the persons of capitalists has proved, in a large proportion of cases, the certain forerunner of exactions and oppressions, which, by gradually impoverishing the actual tillers of the soil, produce the very result that the Home authorities desired to avert, namely, the dispossession of the peasant proprietors and occupiers. No one will indeed deny, as the Despatch in question goes on to observe, that it is "on the contentment of the agricultural classes, who form the great bulk of the population, that the security of the Government mainly depends." But the recommendation to increase the facilities for the growth of middlemen, which appears to have found full expression in the Bengal Tenancy Act of 1885, was calculated to produce the exact reverse of the contentment of the peasant or agricultural classes upon which such stress is justly laid, and affords a remarkable illustration of how the best intentions are often in little accord with the practical measures that are adopted to carry them into effect. It seems obvious, for instance, that every person introduced between the proprietor and the cultivating *raiyat* as a mere speculator (with the view solely "of collecting rents or establishing tenants on the land," as the Tenancy Act expresses the relation)—whose only desire is to get as large a return as possible for his invested capital—must be more or less inimical to the acquisition by the *raiyat* of a just share of the progressive productive value of the land. His interest is *self*, and in the redundancy of an agricultural population he finds a favourable opportunity of exacting his own terms by a natural application of that universal rule of

commerce, whereby each party strives to turn the necessities of the other to his own personal advantage.* Richard III. was not more ready in his distress to give his kingdom for a horse, than the starving peasant with a wife and family is prepared to sell his labour for the cultivation of the soil at a rate which will yield him a bare subsistence for himself and those dependent upon him, while the capitalist fattens on the surplus produce. The rule, in short, *dolus emtoris . . . non quantitate pretii aestimatur*, is as conformable to the natural dictates of human conduct as it is to the principles of Roman Jurisprudence.† To what an extent this pernicious system of sub-leasing gradually extended, may be judged from the fact mentioned in the Report of the Rent Commissioners of 1880, that in Backergunj, a district in Bengal, there were as many as *thirteen* persons having successive interests in the land inferior to that of the proprietor. The system, no doubt, owed the germs of its origin to the practice of farming out the revenues which prevailed under both the Hindu and Muhammadan Governments, but it certainly received a fresh and considerable scope for development when our Government, at the time of the Permanent Settlement, left the unreclaimed waste lands (which were computed to form one-half, or at least one-third, of the whole area of Bengal), at the free disposal of the *zemindar*, unencumbered by a shilling of revenue payment to the State. The *zemindars* were naturally quick to perceive that in the reclamation of these enormous tracts of waste land lay a principal source of their future income and prosperity, where they would reap all the gain without the participation by Government in a farthing of their profit; and as population increased they found no difficulty in securing cultivators upon their own terms with

* Ihering's *Der Zweck im Recht*, I., 132.

† L. 10, C. 4, 44.

only a small margin of profit to the latter.* Large and small grants for purposes of reclamation were therefore effected, and where the grantee found that the tract included within his grant was beyond his own immediate resources of cultivation, he sub-let portions to other tenants; these, again, not unfrequently transferred parts of their holdings to needy relatives and connections, who came there in search of employment and bare subsistence, and thus the principle of sub-leasing went on interminably, penetrating lower and lower into the strata of the lower peasantry. Apart, therefore, from the evils resulting from a splitting up of the land into infinitesimally small holdings, as to which anyone who reads Lady Verney's book on *Peasant Properties* may judge, the complication and manifold subdivisions of interests—the natural outcome from such a state of things as I have just described—have rendered the proper ascertainment of individual rights a matter of the utmost intricacy. Hence it is that in the Bengal Presidency, though the longest under British rule, the peculiar features which distinguish various agricultural tenures, and the particular rights and privileges which appertain to each, are less known, and, what is worse, are less capable of ascertainment with any degree of accuracy, than in our younger possessions of the N. W. P. and the Panjab, where, as we shall see hereafter, measures were very early taken to define the respective rights and interests of the various classes of the agricultural community, which, unhappily, were neglected in Bengal when the Decennial Settlement, with a permanent assessment, was effected in 1793.

One of the most important sub-tenures which was created in the manner above described, was that known as

* "Such is the redundancy of the cultivating class," wrote Lord Moira, in 1815, "that there will never be a difficulty of procuring *raiyats*, ready to engage on terms only just sufficient to secure bare maintenance to the engager."

the *patni* tenure, which is said to have first originated on the estates of the Raja of Bardwan, and to have been introduced afterwards into several of the larger *zemindaris* in Bengal. It was a form of perpetual lease at a fixed rent to the *patnidar* and his heirs for ever, who were bound, if called upon, to furnish security for the due fulfilment of their obligations, and were liable, in case of default, to have their estates sold, and further, if the proceeds proved insufficient to discharge the arrears due to the *zemindar*, to make good the deficiency from the remainder of their private property. The creation of such a hereditary tenure was, of course, in direct contravention of Regulation XLIX. of 1793, but, as I have already pointed out, the breach of that law was more common than its observance; and thus, when Reg. VIII. of 1819 made a new departure, and formally recognised the power which the previous legislation had denied to the *zemindar*, the opportunity was taken to place these important sub-tenures on a legal basis, and to regulate the procedure for bringing them to sale. It was declared that *patnis* were heritable and capable of being transferred by sale, gift or otherwise, at the discretion of the holder, and also to be answerable for the personal debts of the latter, and to be subject to the process of the Courts of Judicature in the same manner as other real property. The purchaser of a *patni* sold for arrears of rent was not bound by leases or other incumbrances created by the defaulting *patnidar*, but was entitled to receive it in the same condition as it came into the hands of the original lessee. The apparent harshness of this last provision, which seemed to ignore the rights of intermediate *boná fide* incumbrancers, was mitigated to some extent by the further provision that such persons might claim, if they thought fit to do so, to pay up the arrears due on the estate, and, on so doing, they could demand to be put in possession of the estate, until they recouped themselves with the proceeds

thereof. These *patni* tenures were usually of large extent, and it was in respect to them that the powers of alienation and transfer, which the law of 1819 conferred upon the tenant, were extensively exercised.* The *howladars* are apparently another class of sub-lessees, whose precise position, except in certain Government *Khas Mahals*, where they have been treated as occupancy tenants, is nowhere authoritatively defined. It is understood, however, that their interest, such as it is, is heritable and transferable, but the rent payable by them is subject to enhancement. The other more common peasant tenures which, by popular consent, are generally regarded as conferring a permanent interest in the holding, and which, so far as they are not abolished by, or inconsistent with, the Bengal Tenancy Act, are not affected by it, are variously known as *Jote*, *Jumma*, *etman*, *guzashta*, and *ganthi*. But beyond the fact that the possessors of these holdings are not ordinarily liable to ejectment so long as they pay the rent which is legally exigible from them, we really know nothing of the other incidents of their tenure. They are unquestionably superior to the mere tenant-at-will, and are believed to be of ancient date ; but having said this, we have exhausted our stock of knowledge, and we could not even venture to predicate of any given case with any degree of confidence, how the rent payable by the occupant is to be calculated, or by what standard it is to be assessed. That such a state of things should exist nearly a century after the establishment of our rule may seem at first sight scarcely credible. But if the reader has followed attentively what has already been said of the fatal resolution of the Court of Directors in 1793 not to define the rights of the *raiyats* ; and if he bears in mind that the proof of a fact becomes more difficult in proportion as its age recedes into the history of the past—more especially in

* The Bengal Tenancy Act does not affect any enactment relating to *patni* tenures, in so far as it relates to those tenures.

India, where witnesses can be hired for a few copper coins per head, who, after a short cross-examination, could be made, like the famous *Kamaleddin* of *Nuncomar* memory, "to sign an assignment of the Kingdom of Bengal"—or of Heaven itself—he will have ample ground for accepting this very unsatisfactory conclusion. It is not, of course, meant to be said that the elements of a decision in any disputed case are absolutely no longer existing; that is a calamity which is fortunately still in the future. But simply that we possess no authentic record, such as exists in the Settlement papers of the N. W. P. and the Panjab, of the peculiarities of these customary tenures, and that the difficulty of investigating the subject at the present day as a *res integra* is necessarily considerably enhanced by the length of time that has intervened since the introduction of the Permanent Settlement. Spasmodic attempts were indeed made at various dates to induce the Home Government to consent to the introduction of a sort of legislative Charter of Tenant Rights, which would place the relations of the *zemindar* and his *raiyats* on a satisfactory footing, and long and elaborate minutes were penned by Indian officials and pigeon-holed by the Court of Directors or their successors at the India Office. At length the uniform barrenness of all these laudable but futile efforts was partially compensated for in 1859, when an Act was passed (No. X. of 1859) which, although imperfect in many ways, closed several avenues which had hitherto proved very fruitful sources of oppression against the *raiyats*, and secured to the latter the peaceful enjoyment of many important rights, which, but for this timely intervention, would probably have been lost to them for ever by long disuse. Lord William Bentinck, indeed, expressed the opinion in 1832, that "all that constitutes the value of such rights had been obliterated long before the introduction of the Permanent Settlement," which contains just sufficient truth to be misleading. No doubt in many

places the exactions of the official collectors of Revenue in the expiring days of Muhammadan Imperial Rule, when even the shadow of a central controlling authority had vanished, had transformed all right into a hideous spectre, hovering over the ruins of a century and more of fraud, tyranny, and injustice. But the spirit of a never-forgotten past was yet there, floating, as it were, above the troubled surface of political decay, and under the ægis of a civilised and powerful Government such as the British introduced, it might easily have been re-embodied in the flesh and blood of a living reality. The opportunity, however, to resuscitate a down-trodden class, to re-animate the almost broken spirit of the "children of the soil," and to raise the tenant to a sense of his ancient rights and privileges—forcibly withheld from him by the agents of the foreign invader whose titular representative sat enthroned at Delhi, a puppet in fact and a king in name, but never willingly relinquished by him—the opportunity to restore these old rights—dormant, perhaps, but still remembered—with one hand, while new rights were lavished upon a more powerful class with the other, was lost. The loss meant another half-century of oppression, actually ratified in some instances by legislative sanction, the impoverishment of the agricultural peasant, and the enrichment of his landlord, which continued to increase year by year until the Legislature was compelled to abandon the former policy of *laissez faire*, and to pass (in 1859) an enactment "to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal."

This Act, which after a little more than a quarter of a century has, in its turn, been repealed by Act VIII. of 1885, was described by Lord Canning as a "real and earnest endeavour to improve the position of the *raiyats* of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by *clearly defining their*

rights and by placing restrictions on the power of the *zemindars* such as ought long since to have been provided." This high praise goes, however, as far beyond the real merits of the Act, as the actual provisions of the enactment itself go beyond its title. The Act did *not* "clearly define" the rights of tenants in Bengal, but it *did* provide for matters which were not directly connected with the mere recovery of rent. Thus it conferred a Right of Occupancy, entitling the tenant to hold his land as long as he pays his rent, after twelve years' continuous cultivation or holding—a provision resented by the *zemindars* as an invasion on their established rights, and by the old *mourousi*, or hereditary tenants, as an attempt to degrade them to the level of the new comers of yesterday. But although the language of Lord Canning's praise was more eloquent than truthful, it was undoubtedly a fact that the Act did, as His Excellency believed it would, "confer a great practical benefit upon the agricultural population of Bengal." It abolished the *zemindar's* power of compelling the attendance of the *raiyats* without any previous application to the Courts of Justice, which was conferred upon them by Clause 8, Section 15 of Reg. VII. of 1799, and which had been made an instrument of great oppression. It amended the previous law of distraint by restricting the right to distrain to the case of rent due for a period not longer than one year, a provision which is preserved by the Bengal Tenancy Act of 1885 (unless the amount claimed is payable under a written contract), and by prescribing a strict procedure to be followed in every case where the right was sought to be enforced. It enacted certain penalties for extorting rent by means of illegal confinement or other duress; it facilitated the interchange of *pattas* and *Kabuliyats* between the *zemindars* and *raiyats*; it contained provisions for the registry of transfers of intermediate tenures and for the settlement of rent or enhanced rent by the agency of the

Revenue Courts; and, finally, it transferred the original jurisdiction in suits between landlords and tenants from the Revenue to the Civil Courts, a provision which aroused the keenest opposition, but which effected a decided improvement in the character both of the investigation and decision of such suits, which were thus brought within the final supervision of the High Court at Calcutta. But although, in these respects, the Act introduced a beneficial alteration of the old law, and afforded some much-needed protection to the tenants against the exactions of their landlords, the framers of the Act made the great mistake of not taking due account of the customary tenures of *Jote, etman, guzastha, ganthi*, and *howla*, to which allusion has already been made, and distinguishing them from those created by the Act itself. These tenures could not, of course, fall under the classification of those sub-tenures which were held at fixed rates of rent, nor of cultivating holdings at fixed rates, and as the Act only dealt with one other class, namely, that of *occupancy tenants* under the operation of the twelve years rule, they fell naturally, in the absence of any other express provision, under the last denomination. This was regarded by the holders of these ancient tenures as a degradation, for, however vague and uncertain may have been the distinguishing features of their original status, there can be no question (as already stated) that by popular accord this class of customary tenures was deemed to be hereditary, and was esteemed for its ancient descent. To assimilate tenants of this class, therefore, to Occupancy tenants, whose advent in the village was within the recollection perhaps of the merest youth in the community, was to them a source of much irritation and bitter humiliation. But the omission had even graver consequences, for the landlords gladly seized the opportunity of reducing all their tenants who could not claim entry among the first two specified classes, into one general class of

occupancy tenants, who merely possessed such rights as the Act itself conferred upon them. They thus practically, if not legally,* got rid of all the customary incidents of the local tenures, and roused greater discontent than ever amongst the very class of agricultural peasants upon whose contentment it was said, in 1862, the security of the Government mainly depends, namely, those who were connected with the land by birth and profession. It was natural, therefore, that an Act which displeased both landlords and tenants, which, if intended as an Act merely to facilitate the collection of rent, went beyond its proper limits, and if meant to define the respective rights of *zemindars* and *raiyats* signally failed to accomplish its object, should have failed also to solve the problems which more than half a century of misguided legislation—well-intentioned perhaps, but nevertheless ill-judged—had involved in greater obscurity than they originally presented in 1793. What was needed was a comprehensive Law of Landlord and Tenant, instead of which, Act X. of 1859 amended the law relating to the recovery of rent. The old customary tenants wished their ancient rights defined and protected, instead of which the Act ignored them and reduced them to the same condition as tenants of twelve years standing. The *zemindars* were content enough to let matters stand as they were prior to 1859, for the legislation up to that period had been uniformly in their favour, but they would not have strongly objected to a statutory definition of the rights of the old *mourousi* or hereditary tenants, who had lived for generations on the soil they cultivated. Instead of this, the Legislature suddenly created a new class of Occupancy tenants, who had hitherto enjoyed no other status than that

* For the Act did not profess to take away the right of any tenant, and this was the construction affirmed by the High Court at Calcutta. But the *zemindars* in practice enforced a different and wider construction, which the *raiyats* were too ignorant to resist.

of mere tenants-at-will. Thus, whether regarded from the point of view of the tenant or from that of the *zemindar*, Act X. of 1859 was, like all its forerunners, a failure pure and simple. It was impossible, therefore, for such an Act to retain a permanent place on the Indian Statute Book.

Accordingly, after the lapse of twenty-six years, the subject again engaged the earnest consideration of the Indian legislature, and an Act more comprehensive in character, wider in its general scope and aiming to fulfil the conditions of a Landlord and Tenant Code for Bengal, and to grapple with and settle, once for all, the rights and obligations of all persons connected with the cultivation of the land, was substituted for the incomplete measure of 1859. This Act, whose short title is the Bengal Tenancy Act, differs very materially in its final shape (as most people will think, wisely) from the form it assumed in the original draft Bill, and will be remembered in the history of Indian legislation as having aroused a degree of excitement and opposition second only to that of the famous Ilbert Bill. It is not proposed in this Paper to enter into the merits of that controversy, which is already buried with the past, and it is to be hoped that the final confirmation of the Act, in the greatly modified form which it eventually assumed, by the Secretary of State for India in Council, will serve to clear the atmosphere which darkened its earlier stages of much vaporous matter, and to induce its opponents to regard its provisions with the light of calmer reason and a more impartial judgment. All that will be attempted here will be to conclude the present article with a short summary of the chief provisions of the Act, which is to come into operation on such date as the Local Government (of Bengal),* with the previous sanction of the Governor-

* The Lieutenant-Governor has already (September 1885) refused the application presented to him on behalf of the Zemindars' Association, to postpone the introduction of the Act for one year.

General in Council, may, by notification in the Official Gazette, appoint in this behalf. It consists of eighteen chapters, comprising 196 sections, and three schedules, and applies to the territories under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and certain scheduled districts specified in the third part of the first schedule of the Scheduled District Act (XIV.) of 1874. The Local Government is empowered, however, with the previous sanction of the Governor-General, by notification in the Local Official Gazette, to extend the whole or any part of the Act to the Division of Orissa or any part thereof.

It is important in the first place to notice that the new Act avoids the error of ignoring customary rights, which, as above shewn, was one of the serious defects of Act X. of 1859. Section 183 contains a general saving clause in favour of any custom, usage, or customary right *not inconsistent with*, or not expressly or by necessary implication modified or abolished by, its provisions. The words *not inconsistent with* the provisions of the Act, although necessary perhaps to ensure a proper application of the Act, are, however, likely to give some trouble in construction, and the difficulty is perhaps rather enhanced than lessened by one of the two *illustrations* attached to the section. Thus it is explained that a usage under which a *raiyat* is entitled to *sell* his holding without the consent of his landlord, is not inconsistent with, nor is modified or abolished by, the provisions of the Act, and will, therefore, not be affected by it. Now, as the Act does not contain any provision as to the sale of his holding by a *raiyat* (not being a *raiyat* holding at a rent fixed in perpetuity), the usage referred to could certainly not be said to be expressly or by necessary implication modified or abolished by the Act. But Section 85, Clause 1, provides that if a *raiyat* sub-lets, otherwise than by a registered instrument, the sub-lease shall not be

valid against the landlord unless made with the landlord's consent; and Clause 2 then goes on to enact that a sub-lease by a *raiyat* shall not be *admitted* to registration if it purports to create a term exceeding nine years. So that, reading the two clauses together, the result seems to be that no *raiyat* can, as against his landlord, *sub-let* his holding for a longer period than nine years, except with the consent of his landlord. Would not this provision raise the inference that what the Legislature wished to guard against was the introduction of a stranger into the holding, in the case of a *raiyat* not holding at a rent fixed in perpetuity, for a longer period than nine years, except with the consent of the landlord? And, admitting the distinction between a lease and a sale, would it nevertheless be quite consistent with such a presumed intention, to allow a custom to operate by virtue of which the *raiyat* could effect a *permanent* transfer, with or without the landlord's assent, by adopting the device of a sale? Would not such a construction lead to an evasion of the provisions of Section 85? Of course a usage permitting a *raiyat* to *sub-let* without any restriction would be distinctly inconsistent with those provisions, and would, therefore, not be protected by the saving section. Why then, it may be asked, and upon what principle of Political Economy, is a custom in favour of an absolute or permanent transfer to be treated differently? If it is desirable to impose a restriction in the one case, it is not very clear why it is not equally desirable in the other. And if the restriction is imposed with the view of limiting the right of sub-leasing, it is not calculated to effect its object, for what is easier than for the parties to insert a clause for renewal for a further period of nine years on the same terms, at the option of the lessee, on the expiration of the stipulated period?

Another important feature of the Act is, that it imposes certain restrictions on the exclusion of its provisions by

private agreement, and notably against the operation of any agreement executed since the 15th July, 1880, and before the passing of the Act, excluding the acquisition of an Occupancy right in accordance with its provisions. The Legislature has thus very wisely recognised, what has been argued above, that the principle of complete freedom of contract cannot be safely admitted in India, in regard to dealings between landlords and tenants of agricultural land. And the restriction on the effect of agreements executed since the 15th July, 1880, or from the date when the Consolidating and Amending Bill, prepared by the Bengal Rent Commission, became known, is one which the experience of what occurred in the Panjab just prior to the passing of the Panjab Tenancy Act fully justifies. In that Province, as soon as it was understood that an enactment was about to be passed, which would confer many important privileges upon the tenants, and remove certain doubts in the existing law, many of the more influential landlords adopted the expedient of getting their tenants to accept leases for 7, 10 or 15 years, the effect of which, it was subsequently contended, was to deprive the tenants who had entered into these agreements of the benefits of the Act, to which they would otherwise have been entitled. The Judges of the Chief Court, however, were equal to the emergency, and by a perfectly fair but (it must be confessed) somewhat liberal application of the principles of Equity Jurisprudence, they refused to enforce these agreements, as having been obtained by the landlords under a species of coercion, at a time when the subject of Tenant Right was under Legislative consideration, and the existing law was in a state of great obscurity. The Legislature, being thus forearmed by experience, has anticipated the recurrence of a similar device on the part of the landlords in Bengal, and it has accordingly very properly excluded from the consideration of a Court of Justice all agreements executed within the period

specified above, so far as they purport to prevent the acquisition by the tenant of an Occupancy right in accordance with the Act.

Reverting now to the more special provisions of the new Law, we find that the Act distinguishes three classes of tenants, namely: (1) Tenure-holders, including under-tenure holders; (2) *Raiyats*; and (3) Under-*raiyats*, that is to say, tenants holding, whether immediately or mediately, under *raiyats*. It also divides *raiyats* into three classes, namely: (*a*) *raiyats* holding either at a rent or a rate of rent fixed in perpetuity; (*b*) *occupancy raiyats*, and (*c*) *non-occupancy raiyats*. The term Tenure-holder is, again, defined to mean primarily a person who has acquired from a proprietor, or *from another tenure-holder*, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, *and includes also the successors in interest of persons who have acquired such a right.* This definition confers upon the middleman a new designation, and embraces within its comprehensive terms all who derive title through or from him. The system of sub-leasing, therefore, on the part of those who take no direct share in the cultivation of the soil, to which such mischievous results are attributed in the past, is now once more *confirmed* by a statutory sanction, probably because it was found to have become too deeply engrafted in the country to be either uprooted or ignored, and probably also to some extent in obedience to the policy of the Secretary of State's Despatch of the 9th July, 1862 (above quoted), which expressed the conviction that it was "most desirable that facilities should be given for the gradual growth of a *middle class*." This "middle class" has certainly grown, but we fear it must be added, to the advantage of the non-cultivating capitalist rather than to that of the peasant proprietor.*

* It speaks much for the clear-sightedness of the elder Canning that he foresaw the inexpediency of creating such a "middle class," and warned the

The Act next proceeds to deal with the rights and obligations of Tenure-holders, Raiyats holding at fixed rates, Occupancy Raiyats, and Non-occupancy Raiyats, describing the incidents of their tenures, the conditions and limits of enhancement of rent, and, in the case of Occupancy Raiyats, of reduction and commutation of rent. The other general provisions as to rent are, however, contained in a separate Chapter (VIII.), and embrace rules and presumptions as to amount of rent, as to alteration of rent on alteration of area, payment of rent, receipts and accounts, deposit of rent, arrears of rent, and produce rents. This Chapter also deals incidentally with the liability for rent on change of landlord or after transfer of tenure or holding, and with the imposition of illegal cesses such as *abwáb* and *mahtut*. The next Chapter contains a variety of Miscellaneous provisions as to Landlords and Tenants, which include such important points as Improvements, Sub-letting, Surrender and Abandonment, Sub-division of Tenancy, Ejectment, Measurements, and the Appointment and Duties of Managers. But perhaps the most important provisions of all are those contained in Chapters X. and XI., which provide for the preparation of a Record of Rights and the settlement of rents. These provisions are, it is true, only what are called "enabling provisions," which can only be put into application by an order of the Local Government, which, except in certain specified cases, must be preceded by the sanction of the Governor-General in Council. But here, the first step, at all events, is taken to retrace the error of the Permanent Settlement and to secure for Bengal in 1885 what every village in the North-West and the Panjab has enjoyed from the earliest days

Court of Directors of the danger of such a policy. The creation of an artificial class "of intermediate proprietors," he wrote in 1817, "between the Government and the cultivators of the soil, where a class of intermediate proprietors does not exist in the native institutions of the country, *would be highly inexpedient*."

of the Revenue Settlement, namely, a proper and authentic record of the rights and obligations of every holder or cultivator of land in those provinces. The importance of such a record cannot be exaggerated, and if the provisions of the Act in reference thereto are carried into effect whenever a fitting opportunity arises, and are applied with reasonable intelligence, this result alone will justify the Government for the time and labour spent on the present measure, which cannot then be regarded as having been altogether wasted. That Record, in fact, must be regarded as the necessary complement of the present Act, without which it would still be incomplete, but in conjunction with which the Act would be in truth a very Charter of the Rights and Liberties of the entire body of Tenants, embodying, as the Record would, the following amongst other particulars:—The name of each tenant; the class to which he belongs, and whether his rent is liable to enhancement during the continuance of his tenure; the situation, quantity and boundaries of the land held by him; the name of his landlord; the rent payable; the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise; if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases; and the special conditions and incidents, if any, of the tenancy.

The remaining Chapters deal with Distraint, Procedure, Sale for Arrears under Decree, Contract and Custom (to which allusion has already been made), and Limitation, while the last chapter is devoted to a number of supplemental provisions relating to penalties for illegal interference with produce, the power of landlords to act through agents, the power of the Local Government to make Rules regarding procedure, powers of officers, and service of notices, the savings for special enactments, and a few other matters.

Such, then, in brief, is the Act which has just been added

to the Indian Statute Book, and which, whatever may be its merits or demerits, has undoubtedly engaged the patient and prolonged study of some of the most highly trained intellects in India. No solid and unbiassed opinion can be pronounced upon an Act of this varied and comprehensive character until sufficient time has elapsed for practical experience to test its provisions. But this much may at least be said in its favour, that if it has failed in any respect, it is not because it has received insufficient consideration, or was hurried through the Council without opportunity for criticism, but is simply owing to the great intricacy of the subject, and the opposing interests that had to be balanced and weighted against each other. It has, in fact, been criticised, abused, condemned, in its inception, in its progress through the Bill stages, and in its final form. The world, certainly, already knows the worst that can be said of it, and yet, perhaps, if this *bête noire* of the Bengal *zemindars* only possessed the gift of speech, it might retort in the dignified language which the poetic genius of a Schiller puts into the mouth of Mary Stuart:—" I can only say I am better than my fame."

Das Aergste weiss die Welt von mir, und ich
*Kann sagen, ich bin besser als mein Ruf.**

* IX., iii., 4, 207.

W. H. RATTIGAN.

II.—THE LATE EARL CAIRNS.

IT is no disparagement to the great lawyers who still adorn public life to say that in Lord Cairns, the country lost the most distinguished example of the Lawyer-Statesman known to our time. He represented better than any of his predecessors the union of great professional attainments with high position in general politics. Somers and Camden belong to the past. The memory of Eldon is still alive, but he was only by accident a politician and was a conspicuously unsuccessful one. Nearer to our own day, Lyndhurst surpassed Cairns in his power of scathing analysis. Brougham will always rank among the greatest of English orators. Both these eminent men enjoyed a longer career in the field of politics than feeble health allowed to the greater lawyer whom the Bar still mourns. The historic names we have mentioned are some of the most brilliant in English Parliamentary History, and they are the only names in this century which can be cited in comparison with the great Irishman who was the first of his fellow islanders to attain the dignity of the English Woolsack.

Brougham held very high rank as a Jurist, but he was not a great lawyer, nor a successful Judge, nor did Lord Lyndhurst make any serious contribution to legal administration. Lord Cairns will always be classed among our greatest Judges, and yet he had not been many years in the House of Commons before he was recognised as one of the first three speakers on the Tory side of politics. If we examine the records of Parliament from 1855 to 1866, we find, putting aside Lord Lytton, who was only an intermittent light in general politics, that next to Mr. Disraeli

himself, Sir Hugh Cairns was the principal champion of the Conservative side on all the great questions before the public. When he passed on to the House of Lords in 1867, his pre-eminence was at once acknowledged, and he became, next to Lord Derby, the most important representative of Conservative interests in that assembly, the most influential adviser in the inner counsels of the party.

Lord Cairns was one of that brilliant race of Scotch descent, who, found in scattered bodies over the north coasts of Ulster, have made the Anglo-Irish name distinguished in every field where brain power and high character could win renown. His father, Mr. William Cairns, was one of a Scotch family settled from the early part of the eighteenth century in the neighbourhood of Belfast. After holding the King's commission for some years in the Army, Mr. Cairns retired from active service, and having resided for some years at Parkmount, County Antrim, he purchased a house in Belfast, and there his son, Hugh McCalmont, was born in December, 1819. The son was early sent to the University of Dublin, where he devoted all his energies to the Classical course. In this branch of study he took honours and distinguished himself by his knowledge of Hebrew. The great prize of the successful student at the University of Dublin is a Fellowship, to be obtained, however, only as the result of a long and searching examination in a wide field of study, and at the date of which we speak the result of the Fellowship Examination in Dublin chiefly depended on Mathematical attainments. For a time, Cairns hesitated what course to adopt. Without Mathematics the Fellowship was not to be had, and his own studies had been in literature rather than the sciences. Of his capacity to take up Mathematics there was no question; but time was required, and Cairns, after reflection, wisely for himself, determined to give up his pursuit of the scholastic repose of a Dublin Fellowship

and try his fortune at the English Bar. He left the University only to resume his connection with it some four-and-twenty years afterwards as Chancellor of the University, and its representative in the House of Lords.

He proceeded to London and completed the usual course of study as a pupil in chambers. The system of lectures and examinations as a preliminary to call had not yet begun. Called to the Bar at the Middle Temple in 1844, he had no hesitation in selecting the Equity rather than the Common Law Courts as the sphere of his professional work. In the University his taste had been for Literature and "the humanities," not for science, and his promise of power as a speaker was already recognised, but at the Bar he preferred to look for advancement in those Courts where Jurisprudence was administered with a certain pretension to science and system, rather than in the more varied and exciting round of Circuit and the Common Law Tribunals. He directed his steps to Lincoln's Inn not to Westminster Hall. After his call he had to undergo the usual ordeal of waiting for business. He read his Reports and Text-books, was diligent early and late in his attendance at chambers, indefatigably "labouring in the abstract," as a witty countryman of Lord Cairns describes the first stage of the junior Bar—but the briefs came before long, and when the stream once began to flow it flowed abundantly, and Mr. Cairns in a few years was one of the juniors enjoying the largest practice at the Equity Bar. In 1852, Lord Derby was in office for the first time, and dissolved Parliament. At the General Election which followed, Mr. Cairns came forward as Tory candidate for his native town. Belfast had for some time past returned Liberal representatives, but Mr. Cairns was placed at the head of the poll.

In the brief winter session which witnessed the defeat of Mr. Disraeli's first Budget and the commencement of the

great struggle for power between Mr. Disraeli and Mr. Gladstone, Cairns took no part. It was only as a member of the Opposition that, in the following March he essayed his powers as a speaker in the House of Commons. Mr. Napier, the Irish Attorney-General to the late Government, opened a debate on the conduct of the Irish Executive in dealing with a series of prosecutions for riots at the General Election in Clare, and Mr. Cairns supported his old friend in a speech remarkable for its telling force and absence of partisanship. He spoke in reply to Mr. Fitzgerald, a distinguished member of the Irish Bar, and in later years his colleague in the Appeal Court of the House of Lords as Lord Fitzgerald.

One passage in this speech, relating to an exciting and now forgotten controversy, is worth quotation here, bearing as it does on larger questions which survive to our own time.

"It had been the practice in that House to talk about Ireland as the chief Ministerial difficulty, and perhaps there was much truth in that statement. But he really thought that they had made it a difficulty for themselves by invariably inclining either to one or the other of the parties by which that country was divided. Why, there was not a nation in Christendom so acute, intelligent, and observant of all legal matters, and understanding them well, too, such as the Irish people, that could witness such vacillation, such weakness, such readiness to give way upon the part of the Executive, without failing to take advantage of it."

Although busy with a large professional practice and without that passion for hearing his own voice, which too often characterises an eminent *Nisi Prius* barrister suddenly plunged into the House of Commons, Mr. Cairns took a very active part in the work of this his first session. In the debates on the Budget he intervened several times, and soon acquired a reputation for accurate

knowledge and clear thought on a variety of questions connected with Finance and Commercial Law, matters too often left to pretenders and theorists, although they are just the discussions in which practical knowledge of law, wisely applied, may be of the greatest service. The busy lawyer, however, generally prefers to limit his work in the House of Commons to two classes of subjects, purely legal questions, or questions of great public interest which may advertise the capacity of the speaker to do something for his party outside his profession. Solid, practical work such as Cairns undertook in the law of Limited Liability, and of Merchant Shipping and Bills of Exchange, is too often neglected by the aspiring barrister. Before the Session closed, the President of the Board of Trade, Mr. Cardwell, complimented him on "the conspicuous ability with which he always conducted the business in which he took part."

The following year he took silk, twelve years after his call, and rapidly obtained as a leader a position quite as great as that which he had enjoyed at the outer bar. His activity in the House of Commons was not remitted. An important series of questions then occupied Parliament, on the eve of the great commercial development which, stimulated by the repeal of the Corn Laws and the gold discoveries, culminated in 1874, and in all of these he took an active part. In the prolonged discussions on the law of Partnership, the Government over and over again yielded their own opinion and adopted Mr. Cairns's amendments.

When the Tories were again called to power in 1858, Cairns's position at the bar and in the House, young though he was, pointed him out for the position of Law Officer, and he became Solicitor-General, Mr. Fitzroy Kelly being Attorney-General. Up to this time he was the successful barrister, applying his whole energies without stint in the

interests of his clients, holding a great position in Parliament as a jurist and debater, and an active supporter of his party; but he had not yet taken any marked individual position in general politics.

From 1858 onwards, we find him more and more attracted to the larger sphere of public action, and every step he took in this direction increased the public confidence in his ability. In 1859, the first Tory Reform Bill was under discussion, and Lord John Russell moved one of those dexterous amendments in the framing of which he had special skill. The Government proposed to reduce the suffrage. Lord John Russell, without committing his party to any particular figures, declared the reduction was not sufficient. After an animated debate, remarkable for great speeches from Mr. Horsman and Lord Lytton, Sir Hugh Cairns rose to reply to Mr. Sidney Herbert, and proceeded to examine the combinations of the Opposition in a speech of marvellous power. Mr. Forster had stated that an agreement practically existed between Lord John Russell and Mr. Bright as to the future policy on Reform, and Sir Hugh Cairns pressed for the terms of this agreement, urging the duty of frank confession with telling insistence. This speech established his position as a great Parliamentary debater. By general consent politics were in abeyance for the remaining years of Lord Palmerston's *régime*, and Sir Hugh Cairns was mainly occupied with the absorbing labours of an Equity leader. Regular in his attendance in Parliament, prompt and searching in the cross-examination to which he now and again submitted the Administration, he gave to the Government of the venerable statesman the best support a patriotic minister can desire, fair-minded and vigilant criticism. On the Law of Bankruptcy, of Patents, and similar subjects, he laboured indefatigably to work out the problems of Jurisprudence presented by our complex social relations.

In 1866 the great question of Parliamentary Representation was resumed by the Russell administration, and Cairns returned to the general arena of politics with full vigour, contesting point after point in Mr. Gladstone's Reform Bill, until the scheme was abandoned, and the Ministry resigned.

On the fall of Lord Russell's Ministry, Sir Hugh Cairns became Attorney-General. Early the following year, on the retirement of Sir William Knight-Bruce, he accepted the post of Lord Justice of Appeal, and shortly afterwards he was called to the House of Lords as Baron Cairns.

No doubt that delicacy of health, which finally shortened his life, had something to do with his disposition to renounce for the Bench the income he enjoyed at the Bar, and the professional work of which he was so great a master. He gave up a large income and abandoned for the more limited arena of the House of Lords, the more exciting and important position of Mr. Disraeli's lieutenant in the House of Commons. But such was his weight in public affairs that his position in the public mind was not impaired by the change. His intellectual power made him indispensable to the party, and three years after he entered the Upper House he was designated as its leader.

Relieved from the toil of daily practice at Lincoln's Inn, Lord Cairns rapidly assumed the front rank as a speaker on general politics. Early in 1867, Lord Russell opened the trenches against the Irish Church in a motion for a Royal Commission to report on the distribution of its revenue, and Lord Cairns replied on behalf of the Government with the ablest exposition of the Financial history of the Church, which is to be found in all the voluminous records of this controversy. A still greater success was his speech on Mr. Disraeli's Reform Bill, which reached the House during the month of July. The debate on the second reading is one of the best examples of the debating power of the House of Lords twenty years ago. With the exception of an able

speech from Lord Derby, introducing the Bill, and another from Lord Grey, who moved an amendment, the first night's debate was mainly given to party controversy as to the propriety of a Tory Ministry attempting to carry a measure of Reform, and this tone of criticism derived additional force from the passionate protest of Lord Carnarvon, who had left the Cabinet because he could not agree to the Bill. In the second night's debate a much higher key was struck by Lord Shaftesbury. At once a representative of the Palmerston traditions, and a man whose eminence in public life raised him above party, he was able to survey the whole subject of Parliamentary reform from a higher platform, and without committing himself to Lord Grey's amendment he stimulated all the forces of resistance to the proposed change. The question in 1867 was how far the intelligent artizan was likely to be swamped by "the residuum" of borough householders. The possibility of swamping the borough householder, whether the intelligent artizan or belonging to the residuum, by the mass of cottagers had not yet come to be considered a question of practical politics. Lord Shaftesbury was eminently qualified by his long labours in behalf of the industrial classes to represent the wants of the sober, thrifty, industrious, rate-paying workman. A great public interest was involved in his advancement, an interest far beyond that game of parties which the country had witnessed for some time. The Duke of Argyll followed with a vigorous party speech, using freely the protests of Lord Carnarvon against the Tory scheme, and the Whig Opposition was further strengthened by a distinct protest against the Bill, from an able and independent member of the House, the late Lord Harrowby. Lord Cairns wound up the serious part of the debate on behalf of the Government in a speech of singular power. He broke away from the prognostications of the Whigs, and examined the question what

was to be done in a series of propositions so calm, so fair, so practical, as to make his listeners think that now for the first time they had really come to business. Having shewn that the application of the existing system of representation to the altered circumstances of the country demanded a change, he proceeded to relate how long and mischievously the Whig party had trifled with the question what that change should be. It became necessary, in order to secure an interval of rest for the settlement of other business, to find a principle which was not a mere question of figures like the suffrage test of 1832, and Household suffrage was the only one. Perhaps no better example could be found of Lord Cairns's style of oratory than this most important speech. That style was once described by a clever writer whose friends had often shivered under the cold flood of his remorseless analysis, as "frozen oratory." "It flows," says the author of *Political Portraits*, "like water from a glacier; or, rather it does not flow at all; for though Lord Cairns never hesitates or recalls a phrase, he can scarcely be called in the proper sense a fluent speaker. His words rather drop with monotonous and inexorable precision than run on in a continuous stream. The several stages of his speech are like steps cut out in ice, as sharply defined, as smooth and as cold."

Allowing for the unfriendly tone of this description, it may be said to indicate truly a great feature of Lord Cairns's oratory. Whether his speeches were merely critical, directed to assail his opponents, or constructive, leading his audience up to agree with him in some great resolve, like this Reform speech of 1867, the studied absence of passion was one of their great characteristics. The hearer's attention was seized by the clearness of exposition, and rivetted so firmly on the thought expressed, that he had no time to consider the attitude or feeling of the speaker. He was not so much invited or allured to agree;

he was compelled to assent by a remorseless logic. That Lord Cairns, however, could adopt a more eager tone with consummate success was evidenced on more than one occasion. His speeches on Mr. Gladstone's Suspensory Bill in 1868, and on the Irish Church Bill of 1869, are admirable alike for the power of exposition and the sympathetic earnestness of the orator. The speech on Mr. Gladstone's Suspensory Bill is the best answer to the discriminating but depreciatory comments we have quoted. There is no more masterly and earnest appeal in Parliamentary records than the address with which Lord Cairns closed the third night of the debate on Mr. Gladstone's Bill to suspend all promotions and appointments in the Irish Church until the policy of his Disestablishment resolutions had come into operation. Lord Cairns began with a characteristic examination of the practical working of such a scheme, shewing the unfairness with which it would smite the large parishes as well as the small, the hardship it would wreak on the individual interests of the clergy, the unparalleled character of a proposal to strike with paralysis a great Institution whose ultimate fate was not yet determined by the country; but he next proceeded with a vigorous swoop to seize on the main questions to which the House was invited to commit itself, in the form of a scheme, disguised as a temporary measure of one year's duration. The principles of Disestablishment and Disendowment he examined as regards the Union of the two islands, the history and work of the Irish branch of the Church, the influence of the Church among the Irish population, the general effect of the scheme upon property, and, in the circumstances of Ireland, upon the Royal Supremacy. The term Royal Supremacy sounds too often as a piece of pedantry, but whatever may be its qualified significance in this island, in view of the political changes of modern times, in Ireland it means the Supremacy of the Law. Of the

many eloquent and stirring appeals made by men of various parties on behalf of the Irish Church, none is more impressive than this great effort of Lord Cairns preceding the election campaign of 1868.

We have been tempted away from the main course of narrative proposed in this brief paper by the leading position in politics which Lord Cairns was called to at that period of his career at which we had arrived. On the retirement of Lord Derby from office in February, 1868, Mr. Disraeli appointed Lord Cairns to the office of Lord Chancellor, and he was at once recognised as not merely the Speaker of the House of Lords, but also as holding that less defined but more responsible position of leader of the majority in the Upper House of Parliament. A few months found the Tory party in opposition, defeated at a General Election, and the new Government pledged to sweeping measures on these very questions of which Lord Cairns had most personal experience, Irish policy in general, and the Irish Church in particular. In the two following years, 1869 and 1870, he conducted the campaign of the Tory party in the Upper House with consummate ability, fighting the battle of the Irish Church with enthusiasm and tenacity, and able, when the overthrow came, to settle the terms of capitulation with a degree of calmness, a ready mastery of detail, such as would have done honour to some soldier of the reserve who had been quietly husbanding his energies whilst the decisive battle was raging.

In 1872, failing health made him glad to be relieved of the duties of leadership in the House of Lords, and the interval that elapsed between this time and his re-appointment to the office of Lord Chancellor is a fitting one to recur to that portion of Lord Cairns's work naturally most interesting to readers of this *Review*, his share in the great work of Law Reform. The great achievements of Brougham in 1832 and subsequent years had been followed, at fitful

intervals, by the great body of legislation which from 1847 to 1865, under the guidance of Lord Cranworth, of the second Romilly, of Sugden, and of Bethell, besides the labours of Napier and Whiteside in Ireland, had metamorphosed the character of our Procedure. Valuable as the work of these reformers was, indispensable as it was for all that was to follow, we are justified in saying that the great note of this period of Law Reform was piecemeal legislation. One abuse was corrected here, another there. The powers of Equity were given to a Court of Common Law, the powers of a Court of Common Law were given to a Court of Equity, in each case necessarily with reservations and qualifications.

In 1866 the Judicature Commission was appointed. Lord Cairns became its Chairman, and under his guidance a new era of Law Reform was before long entered upon. The Judicature Acts of 1873 and subsequent years are the outcome of the labour of this body.

The first Report of the Commission, presented in 1867, bears the impress of his incisive logic. This document refers to the recommendation of the Common Law Commission of 1851 that the Common Law Courts ought to be empowered to give all the protection and redress which can be obtained in any jurisdiction, and proceeds to urge the consolidation of all the Courts into one Supreme Court.

The second Report of the Commission was mainly concerned with the extension of local jurisdiction by County Courts, and Lord Cairns dissented from it, urging that the true remedy for the delay of business was to make provision for regular sittings of the Supreme Court in thickly populated parts of the country. This policy, although not adopted by the Judicature Commission, seems likely to be the ultimate solution of the problem how to provide a cheap and prompt legal administration. The main principle of

the great scheme founded on the work of the Judicature Commission was the abolition of separate Courts, and that was the great step forward proposed by Lord Cairns's Report in 1867.

For England, at least, the higher Courts of Judicature in Civil causes are, since 1873, all united in a certain order of precedence. It is true that this union is as yet more in theory than in practice, as, for instance, the defeated suitor in Equity knows to his sorrow when he contrasts a bill of costs between party and party in the Chancery Division with a bill in the Queen's Bench Division. But the legislation of 1873 to 1876 embodied this great principle of uniform Judicature.

The main principles of the Judicature Acts were adopted in the last years of the Government which had succeeded to the Tory Ministry of 1866. Lord Selborne, who became Chancellor in 1872, was not only a Law Reformer of great courage and zeal, but united to that open mind ready for schemes of reform, derived from the school of Romilly and Brougham, a reverence for the past, and a high sense of principle which eminently qualified him to carry out the arduous work so long advocated by logicians and practical men. The unity of spirit pervading legislation and administration with regard to Jurisprudence in this country has never been better illustrated than in the joint influence exercised from 1867 to 1885 by these two eminent men, dissociated in early sympathies by difference of locality—the one an Irishman, the other an Englishman—attracted to different orbits of party politics, each distinguished ornaments of distinct religious schools. Notwithstanding these influences tending to divergence, both these eminent men, in office or out of office, co-operated in the great work of Law Reform during a long series of years, shewing an example which is not without its lessons to politicians engaged in other departments of public life.

The great scheme of 1873, founded on the reports of the Judicature Commission, abolished the Appeal Jurisdiction of the House of Lords, and to this scheme Lord Cairns assented. The argument that the highest Court of Appeal should consist of lawyers and lawyers only was overwhelming, and why should these lawyers be anything but lawyers? Accordingly, the Supreme Court of Appeal was constituted without any connection with the second Legislative Chamber. The operation of this part of the scheme was postponed, and once the scheme was adopted, and the battle over, a strong reaction was marked in favour of maintaining the jurisdiction of the House of Lords.' When Lord Cairns, returning to office with the flood-tide of Tory success in 1874, was called on to carry out the great Legal revolution achieved the previous year, he found himself face to face with an eager Opposition, bent on recovering the lost ground, and determined to restore to the House of Lords the jurisdiction of which Parliament had proposed to deprive them. There were many objections to such a course. Strongest of all was the general principle of government, recognised by all wise men, not to unsettle in one Parliament what had been settled in a previous Parliament, unless on special grounds of moral obligation, such as would, it might be fairly supposed, have influenced the former Parliament had these grounds been taken account of. There was the further objection to any change at this date, that the old system of leaving the work of the highest Court of the realm to be done by a chance collection of ex-officials, with the Constitutional liability to an incursion into the tribunal of the whole body of the House of Lords, was utterly unreasonable in the conditions of modern life. Another circumstance which made the opposition inopportune was the sanction which Lord Cairns, the chief Law Officer of the new Government, had given to the original scheme. An Act was passed in 1874 to further adjourn the

operation of the Judicature Act, in order to give time to consider this and similar questions. In 1875 the opposition had grown stronger. Lord Cairns resolutely held his ground against any renewed legislative sanction for the old system, and the result was the astonishing one of a compromise introducing Life Peerages.

Those who recollected the storm raised against a powerful Government by the proposal to make Lord Wensleydale a peer for life were naturally astonished to find the principle of Life Peerages accepted by Parliament almost without a murmur, and in some sense as a triumph for the House of Lords. It is true that the power to create Life Peers is in the existing scheme limited as to number, and can only be exercised for a definite object, but the conceding to the Crown the power of giving seats in the Upper House for life only was a fact as remarkable in Constitutional History as anything which has occurred since the King's writs were sent in 1265 to Boroughs as well as to Counties. Lord Cairns gained his object, the constitution of a Supreme Court of Appeal, nominated on grounds of personal qualification, and commanding the confidence of the Legal Profession. That the judges of this court should be *ex officio* clothed for life with the political rights of Peers was another question, on which he was content to be guided by Lord Redesdale and Lord Wemyss.

Of the work done by Lord Cairns in building up the principles of Partnership Law, our Reports from 1867 to 1882 bear abundant evidence. His decisions in the Court of Appeal in 1867 on Limited Liability are some of the most remarkable monuments of courage and judicial discretion in the administration of the Law, and the same characteristics mark his labours in the Court of Chancery and in the House of Lords appeals. One of his most characteristic works as a Judge was the series of decisions in the *Albert Insurance Arbitration* during 1870 and 1872. A great number

of the claims arising turned on the principle of Novation. The Insurance Company was, as a matter of fact, the result of various financial transformations, and Lord Cairns took a very new and vigorous line as to what constituted evidence of the third element in Novation, the assent of the debtor to accept a new security. The receipt of notice of the amalgamation without any steps to interfere with the process, and similar notes of acquiescence, were held by Lord Cairns sufficient to constitute the new agreement merging the old. Lord Westbury, on the other hand, went back to the strictest principle of Equity as interpreted against the debtor, and in favour of the creditor, holding that the obligation of the old debtor could not be got rid of without something equivalent to a formal release on the part of the creditor. There is much to be said for Lord Cairns's view as applicable to the more rapidly changing nature of commercial transactions in our time. Facility for new arrangements and combinations is almost a necessary condition of Joint Stock Company work, and clear notice ought to be sufficient to make these changes complete in the absence of opposition. If it is argued that persons who take shares in companies, who insure their lives, and so forth, are not always prompt in looking after their own interests, Lord Cairns would answer on behalf of the Commercial community, so much the worse for them, but the business of the vigilant and active should not be hindered on account of these sleepy drones. This is the spirit which runs through the decisions, of which *Kennedy's* case is the most noted, and although it may be said that they are too strong a departure from previous practice, and therefore technically bad law, it can hardly be doubted that they represent the state of law which will ultimately be adopted by Parliament.

In the same spirit of administration which suggested the decisions in the *Albert Insurance Arbitration* was conceived the policy of aiding to curtail the periods of limitation.

The reduction of these periods by the Acts of 1874 and 1875 was mainly due to Lord Cairns's just conception that Law ought to facilitate the proceedings of the active and intelligent, rather than keep open a number of indefinite possibilities, entailing great cost on the public, and offering a high premium to chicanery.

The work done by Lord Cairns during the six years he held the office of Lord Chancellor will probably only be fully known at some distance from the present time. Notwithstanding the passion for "early information" about the personal share this man or that has had in great events, the decencies of society and the very nature of modern political life make an exact estimate of the share due to each leading man, a question which can only be settled at a certain distance of time. One example may be mentioned of his labours in these years. The controversy over the famous Admiralty circular grew more angry, and involved every successive step the Ministry took, until at last the whole question was put into Lord Cairns' hands. A satisfactory solution of the difficulty was soon discovered, and the public mind was at rest.

In all matters of administration within his province, Lord Cairns was vigilant to take the best advantage of the state of public business for attaining the great ends of Government efficiency. The carrying out of the Judicature Act of 1873 was even more difficult than the passing the Act itself in an energetic Parliament such as that of 1868, and we have described how indefatigably Lord Cairns laboured during the sessions of 1874 and 1875 to bring into operation the scheme of his distinguished colleague in Law Reform, Lord Selborne. A measure of minor importance illustrates the energy and intellectual range of Lord Cairns. The protection of Industrial property, or rather the want of protection for such property, in comparison with the elaborate protection

extended to Landed property, had long been a subject of disquisition in the press. Lord Mansfield had recognised trade custom as regards Bills of Exchange. Lord Langdale, Lord Cranworth, and Lord Justice Mellish had given a similar recognition to the Law of Trade Marks, and Lord Westbury and Sir William Page Wood, afterwards Lord Hatherley, had finally established the rights of owners of Trade Marks. The nature of this property being once established, the next step was to give it statutory recognition, and supply facilities for securing it protection, and this Lord Cairns undertook in the Trade Marks Act of 1875, which for the first time established a system of Registration of Trade Marks in accordance with the practice of Foreign countries, in which perhaps English Trade Marks are, from the reputation of the English manufacturer, a property more important even than in the British dominions.

The course of public affairs made practical legislation very difficult in the years that followed 1875, but Lord Cairns did not lose sight of his schemes of Law Reform, and after many disappointments succeeded in passing the most important measure affecting Landed Property in this country since the legislation of Lord Cranworth, namely, the Conveyancing Act of 1881, and the Settled Land Act of 1882, both measures carried after he had ceased to hold office on the fall of Lord Beaconsfield's Ministry.

The development of the Eastern Crisis in 1876 soon attracted public attention to other questions than those concerning home administration, and in the troubled Sessions of 1877, 1878 and 1879, there was little scope for that kind of work which Lord Cairns's character and position in the Ministry enabled him to undertake. During all these Sessions, however, he was active, and a powerful aid to his colleagues, and notwithstanding the able work done by Sir Stafford Northcote, Lord Cranbrook, and Sir Michael Hicks Beach, at the end of the Parliament elected in 1874

Lord Cairns stood third, after Lord Beaconsfield and Lord Salisbury, in the public estimate of the strong men of the Tory party.

After the fall of the Beaconsfield Ministry, this reputation was not diminished. Failing health prevented that constant intervention in public business which would have been most congenial to his energetic nature, now relieved from professional labour, but his speeches on special occasions went at once to the ear of the nation.

Amongst the greatest of his speeches at this period was that of August 3rd, 1880, on the Compensation for Disturbance (Ireland) Bill. He examined the provisions of the Bill in the light of Contract Law, and then went on to examine the Government defence of it on social grounds as that of actual suffering, on police grounds as that of public danger. In the first part he shewed that its provisions involved much larger principles than the promoters of the Bill acknowledged; then, that the distress had diminished, that the probability of a number of evictions had been grossly exaggerated, and he was able to appeal to his own exertions on behalf of the Irish tenants when, as a young member of Parliament, he gave all his aid to carry through the House of Commons Sir Joseph Napier's Tenant Bills in 1853.

Among his later speeches, the address on the Transvaal, in 1881, is one of the finest examples of his best known style, and made a great impression throughout the country. It is not so pregnant with the nervous vigour of the man as some of his other speeches, such, for instance, as his speech on the Suspensory Bill in 1868, on the Reform Bill in 1867, or the Compensation for Disturbance Bill in 1880. Even some of his judgments in Court may claim comparison with it, but as a consummate indictment of a Ministry for what he held to be pusillanimity and incompetence, it will live in our history. We have already alluded to his share in the inner councils of his party, and how

remarkable the influence of his clear intellect was understood to be is well illustrated by the reference to him made by a great political opponent a few months since. Mr. Bright, talking of the circumstances in which the compromise on the Reform question in 1884 had been adopted, alluded to the fact of a meeting between Lord Salisbury, Lord Cairns and the Duke of Richmond, during the autumn, in Scotland, as marking the turning point of the struggle on the Bill.

As year after year passed on, the weakness of chest which he had struggled against with all the energy of his resolute nature told upon him, and his attendance in Parliament in 1883 and 1884 was not so constant as of yore. The great movements in Philanthropy and Religion which had from his earliest years attracted him never appealed to him in vain, and notwithstanding very unfavourable weather he came up to town to support his veteran colleague in these labours, the late Earl of Shaftesbury, in opposition to Lord Thurlow's motion, and on this occasion he spoke for the last time in the House of Lords on the 20th March last. He returned to Bournemouth, where for some years past he had sought protection from the inclemency of our English spring. Riding a few days afterwards in unusually harsh weather, he caught a severe chill, and after one last struggle of a vigorous will, passed away at the early age of 65. The grave sense of loss felt by the country was well expressed in the commemorative addresses delivered in the House of Lords after the Easter recess.

On this occasion Lord Salisbury, after expressing his cordial sympathy with the terms of personal regret used by Lord Granville, Lord Selborne, and others, said: "Lord Cairns had an eminence not often granted to one man. He was equally great as a statesman, as a lawyer, and as a legislator. In all these three capacities his memory will live in the memory of his fellow-countrymen, and will leave its mark on history."

The great place which Lord Cairns filled in public life for more than twenty years is the more remarkable when we recollect the age at which he left us. Sixty-five years brings us little further than the threshold of that period which to many men of noble ambition and public spirit has been the first harvest-time of achievement rewarding long years of resolute exertion.

J. LOWRY WHITTLE.

III.—THE ORIGIN OF EUROPEAN LAND COMMUNITIES.

SIR HENRY MAINE, in the course of an investigation of the normal form of land settlement and the nature of primitive occupying groups, has the following passage: "In enquiries of the class upon which we are engaged, the important fact which I stated here three years ago should always be borne in mind. When the first English emigrants settled in New England they distributed themselves in village communities; so difficult is it to strike out new paths of social life and new routes of social habit." * The passage is a very remarkable one, and its importance has been recognised by no less an authority than M. de Laveleye, who quotes it with approbation in his valuable work, *De la Propriété et Ses Formes Primitives* (Paris. 1874), in support of the views he has there elaborated. The advocates of Land Nationalisation, and indeed of more advanced forms of Socialism, could wish for no stronger argument on the historical side of the subject. That such a form of settlement should have suggested itself after centuries of opposing influences, seems to point conclusively

* [*Early History of Institutions*. London. 1875 (preface dated 1874), p. 94. The earlier assertion referred to will be found in Maine's *Village Communities*. London. 1872, p. 201.—ED.]

to the fact that co-ownership of land is a "social habit" amongst Teutons, that at the date of the American settlements there existed a strong inherited tendency in that direction, and that it therefore exists at the present day, although probably in a lesser degree. Unfortunately, although the passage contains the ordinarily accepted view of the nature of the first American settlements, it is entirely misleading. It is certainly true that these settlements originally assumed the form of communities, but they were no more analogous to a village community, as Sir Henry Maine usually employs the term, than is an ordinary land company of the present day. The case most strongly in point is that of the Pilgrim Fathers' Settlement in Plymouth Bay, which at first assumed a highly communistic form. But this form was not chosen by the settlers. On turning to their *Annals* we find they had practically no voice in the matter. The arrangement was forced on them by the Merchant Adventurers of Leyden, who provided them with ships and money for the expedition. It was most distasteful to them, and the very condition of which they complained most bitterly was that which provided that "the houses and lands improved, especially the gardens and home fields, were to remain undivided" at the end of the seven years for which the agreement was made. The Planters landed at the end of the year 1620, and as early as April, 1623, we find allotments for a year being made by lot, "because there was small hope of doing good in that common course of labour we were in." Although a marked improvement in the prosperity of the Colony was the immediate effect of this, it did not satisfy the Planters, and the next year, on the people "requesting the Governor to have some land for continuance, he gave them each an acre, 'not yearly by lot as before,' but in severalty till the end of the seven years," which was all he had power to do. The *Annals* are

full of expressions that shew how distasteful was the system of common labour, and how difficult it was found to work the community smoothly. Young, in a note to his edition of the *Annals*, says emphatically: "They entered into this hard and disadvantageous engagement with the Merchant Adventurers not voluntarily, but of necessity, in order to obtain shipping for transporting themselves to America. . . . . It was a partnership that was instituted, and not a community of goods. . . . . They dissolved partnership, and set up for themselves as soon as they were able." Thus we see that, so far from the first American settlement demonstrating the existence of a tendency to co-ownership and common cultivation of land, which are the two prominent features of the Mark system, it points in precisely the opposite direction. The "social habit" of several ownership and independent labour was so strong that it was found impossible to proceed on any other system.

The misapprehension into which, I venture to think, Sir Henry Maine has here fallen, is most important. For if the subject is to have something more than a mere antiquarian interest it is the existence of this very "social instinct," which is the whole gist of the question. What we want to know is whether or not Legislators, for the last eight centuries, have been working in harmony with the tendencies of the people; whether, in fact, the basis of our Land Laws, to be in perfect accord with our true social habits should be common or separate ownership. Whether the importance of "inherited tendencies" in political and social questions has not of late been a little exaggerated, I do not pretend to say, but as it has become the fashion to introduce them into such enquiries, it is highly desirable that we should be quite sure what they are.

At the outset, an observation arises upon the whole of the evidence upon which the modern theory has been built.

As far as we can tell—and there is very good ground for believing it to have been the case—the whole of the countries which have been explored for traces of the early Teutonic land system were settled by Celts, or kindred races, before the arrival of the Teutons from the East. The new comers found, not a virgin country where they would have been at liberty to work out a system in accordance with their own instincts and habits, but a land settled by a people of no lower intelligence than themselves, a people housed in comfortable villages, with fixed laws, fixed institutions, and, above all, a fixed agricultural system. The more the Celts are studied the more clearly does this fact appear. Sir Henry Maine, in speaking of the Preface to the Brehon Laws says, "The assertion which is the text of Dr. Sullivan's treatise may be hazarded without rashness, that everything in the Germanic had at least its embryo in the Celtic land system." The effect that such a state of things must have had upon a nomadic or semi-nomadic people such as the Teutons were when they first made their appearance in Europe,* seems to have been lost sight of. The cause of this oversight is not far to seek. It arose probably from the fact that until recently it was believed that the invaders burned and laid waste wherever they trod, and utterly annihilated the pre-existing populations. But this is now known to be contrary to the truth. Whatever may have been the case in England, where the contest seems to have been exceptionally stubborn, the Teutonic occupation of the greater part of the Continent was of a much more peaceable character. There the inhabitants were neither massacred nor driven off. They seem to have at once recognised the hopelessness of a prolonged

[* Cf. Geffroy, *Rome et les Barbares* (Paris. 1874), who takes the Mark as the index of the transition from the nomad to the agricultural condition (p. 186), and repeatedly speaks of the German tribes as passing from the former to the latter.—Ed.]

resistance, and to have contented themselves with continuing on their lands in subjection to their conquerors upon such terms as they were able to obtain. Now a settlement made upon a foundation so elaborate as the Celtic clan system must, to a great extent, have been forced out of its natural lines. What probably occurred was this. The first conquests were made by restless spirits, attracted by the rich land and comparative wealth of the Celtic agricultural communities. Having conquered or occupied one or more of such communities, each band of adventurers would settle down in the village, or close beside it, and without any thought of whether the land belonged to all or each, would compel such of the old inhabitants as survived to work for them, and bring in the produce of the land to be divided amongst the conquerors according to their rank or services. As the Teutonic element increased in numbers, the Celts would be forced lower and lower in the social scale, and gradually become absorbed in the more vigorous race. Their place as labourers would be filled by the descendants of the old free settlers, till at last a Teutonic cultivating community was formed on the old Celtic lines.* It may be objected that this view of the origin of village communities does not account for the traces of them that are found in those remote districts which could not have been settled by the sparse Celtic population which occupied the country at that time. But it must be remembered that as population increased, and the fertile lands formerly occupied by the Celts became over-crowded, settlements would be made upon lands never before cultivated, and these would naturally fall into the lines of those already existing. It is not improbable, moreover, that a large proportion of these

* These remarks, of course, do not apply to those Celtic countries which had become Romanised, where, as Mr. Seebohm has pointed out, the land system is merely a development of that established by the Romans.

new settlements were founded by forced emigration of Celtic thralls. They would naturally be the first to give way where it was found that the richer and more accessible districts were becoming too narrow. From this point of view the customs of pre-existing Celtic populations become a most important factor in the question. Nor is this all. There is another consideration of almost equal significance which has been kept too much in the background. It seems to have been forgotten how foreign such a state of society as the Theory presupposes must have been to all we know of the Teutonic character; how it must have jarred on that strong individualism which underlay their power of political cohesion. Every historian who came in contact with them, from the earliest times of which we have any record, dwells on their hatred and contempt for urban life. It is the one race characteristic which has been placed beyond all doubt. From the very first, the whole system must have worked with considerable friction; but however irksome it may have been, there was no escape from it. A communistic agricultural system was the only one known to them, and until they were in a position to throw over their instructors, they were bound to follow their teaching. In a few generations, as they settled down into a true agricultural people, and began to think for themselves, the individual side of their characters would begin to assert itself. New customs and new laws would arise at its dictation, such Celtic methods as were out of harmony with Teutonic ideas would one by one be laid aside, and the individual would stand out more and more from the community, until each man's separate control over the land allotted to him reached a point which was in conformity with the prevailing conception of the true mean between unity and individual freedom of action. The rapidity with which the change was carried out, and the point at which it rested, must have varied in different

districts, in proportion to the Celtic element in the population. In some places, no doubt, the movement went but a very little distance. Conditions may have existed which were unfavourable to it, and here it is that we have the most strongly marked traces of a village system. In other places, again, the Celtic influence may have been so weak, and the nature of the country so unfitted for cultivating groups, that a system was reached that was almost identical with that which Teutons would have developed in a virgin land. Whether a system so developed would materially differ from the "Mark" system, which, since Von Maurer's researches has been universally accepted as the original Teutonic type, must remain a matter of conjecture, unless such a virgin land is to be found. Could it, however, be shewn that where a Germanic land system has been allowed to work itself out apart from Celtic or Roman influences, the result has been a system of separate ownership, we should begin to tread on firmer ground. A grave doubt would arise as to whether the Village Community was after all an essential part of the Teutonic polity; whether, if pure Teutonic land communities ever existed, their foundations were not from the first being slowly and surely undermined by the restless spirit of individuality which nothing could entirely destroy, and, lastly, whether it would not be a step backwards to attempt to establish a land system based upon the principle of common ownership.

It is from these considerations that the peculiar interest of the Norwegian Land-laws arises. In Norway we undoubtedly have a country which presents all the conditions we require for working out the problem before us. Prof. P. A. Munch, in his *Norges Folks Historie* (Vol. I.), in a masterly review of the evidence, places this beyond all doubt. To begin with, no pre-Teutonic name exists for the country, as is the case everywhere else where the land was settled before the arrival of Teutons. The oldest geographers, even if they refer to

it at all, which is doubtful, give it the vague name of Thulé. "Norge," the modern name of the country, is a modification of "Norvegr," a Norse word which means "Northern Pastures." Palæontology points to the same conclusion. The only remains of a population anterior to the Norseman which exist are those of a people akin to, if not identical with, the Lapps and Finns of our day, a people ignorant of the use of metal, and whose only domestic animal was the rein-deer. Like the Lapps they must have been practically dependent upon those animals for subsistence, and like the Lapps must have been compelled to wander with them up above the timber line, where alone they will thrive. That this people ever occupied anything that could be called a settlement on the lower districts, a glance at what the country then was will show to be impossible. The vast forests which now overhang every valley, growing vigorously wherever a root can cling, must at that time have covered the whole face of the country up to the timber line, which was then more elevated than it is to-day. Were the hand of man even now withdrawn, in a few years no trace would be found of the well kept fields through which the traveller passes. Dense as such forest growth would be, it must have been far denser then, before the recent upheaval of the peninsula had affected the size and luxuriance of the vegetation. In such a country a people ignorant of metal could never have existed. Their rude stone implements were quite inadequate to cope with obstacles at least as great as those which the Canadian pioneer encountered in days gone by. The lowlands were probably deserted save by the hunter, and the more adventurous spirits who came down to the coast to carry on the fitful trade with Celtic merchants, which seems to have existed at a very early period. A few Celtic ornaments, probably bartered for furs, have been found scattered up and down the country, and traces on the coast exist which seem

to point to temporary Celtic trading stations, or perhaps merely shipwrecks. Beyond these sporadic remains no relic has ever come to light. The country then was practically unsettled. As far as the Northmen were concerned, they found a virgin land. But before passing to an examination of the phenomena that are here presented to us, it must be noted that these remarks do not apply to the whole Scandinavian peninsula. They are only true of Norway, and what is called Sweden proper. In the Southern provinces of Sweden, Celtic remains exist in abundance. These districts were undoubtedly settled by Celts before the arrival of the Northmen. This must always be borne in mind, for it has a most important bearing on the enquiry before us.

Such then was the country on which the Northmen landed, with the love of individual freedom of action which generations of pastoral life had engendered strong upon them. A pastoral people, as all the place-names shew —ignorant of the practice of agriculture, unless perhaps of that rude field grass husbandry which Tacitus describes, and which is hardly worthy of the name, a pastoral, warlike people, fierce, and impatient of control even to lawlessness, with the problem of settled habitations and fixed boundaries in a narrow land to work out as best they could without help or hindrance from any other race. How did they set about the solution? Surely it was not by a settlement in cultivating groups. The essential feature of such a system, the village, the restraint and submission to numberless petty rules which it entails were contrary to all their traditions. What is far more probable and far more in accordance with all we know of their character, is that each head of a family made his clearing and built his house wherever he wished, or in case of competition wherever the *Thing* appointed. "*Colunt*," says Tacitus,* "*discreti ac*

[* Germ., c. 16.]

diversi, ut fons, ut campus, ut nemus placuit." Each man dwelt apart, surrounded by his thralls and the children who were to take his place when he passed away. Thus they founded the *Odel* system of Norway, a system which exists to this day, modernised indeed, in many ways, but yet bearing on its face the unmistakeable stamp of the remotest antiquity.

This view of the original settlement is, of course, entirely conjectural, and as such would be worthless, were it not confirmed in a most remarkable manner by a peculiar characteristic of the country, which is one of the first things that strikes the traveller in Norway; and that is the entire absence of agricultural villages. At important points of distribution, such as the heads of Fjords, or the meeting of trunk roads, a village is here and there to be met with, but throughout the greater part of the country no dwellings are to be seen but detached farmsteads, each complete in itself. This peculiarity of the country, although often remarked, has received but little attention from labourers in the field of Land History, and this is the more surprising when we remember how important a factor the village is in the question before us. It is the particular feature of the Communal system which displays the greatest vitality. It survives the complete partition of the land, and serves to mark the existence of a community long after every other relic has disappeared. It is not, of course, contended that every village is the infallible sign of a primitive community. Villages may have arisen from many different causes. All that it is necessary to assert is that it is highly improbable that a Communal system, the very essence of which is the village, existed in districts where no villages are found. Nasse himself endorses this view. "We find," he says, in his *Agricultural Community*, "that in the districts in which this agrarian system prevailed, it was the invariable custom for the farmers and small

proprietors to dwell together in the village." He quotes Marshall to the same effect, in a passage where it is pointed out that the regions of isolated farmhouses in Scotland, noticed by Donaldson, were exactly those districts in which community in land had never existed. But in the case of Norway we can go further still. For we have the authority of Prof. P. A. Munch for saying that there, as well as in Sweden Proper, "the true Norse lands," villages not only do not exist now, but never have existed. As soon, however, as we pass into Scania in Southern Sweden, and into Denmark, we find villages and a Village System in more or less active operation. Here, then, we have a most significant fact—that the non-Celtic regions of the Scandinavian peninsula are regions of separate homesteads and the Celtic regions regions of villages. In face of such a remarkable coincidence it seems impossible to avoid the presumption that the Village System is not Teutonic but Celtic in its origin, and that not only does the Celtic land system contain the embryo of the Teutonic, but that it is itself the embryo from which the Teutonic system has been developed.

I am well aware that it is generally held to have been demonstrated that Scandinavian tenures are practically indentical with those of Germany, but I cannot help thinking that this view is due to enquirers having confined themselves chiefly to those parts of Scandinavia which were best known and most accessible, namely, Southern Sweden and Denmark. What errors may arise from such a partial examination, I have already endeavoured to shew. I am the more inclined to believe that such has been the case since in that elaborate set of Reports on Foreign Land Systems, which were made by our Diplomatic agents throughout Europe in answer to a list of questions furnished by the Foreign Office, Norway is the only country that is omitted. The Report for Norway and Sweden is entirely

confined to the Swedish land system, which differs materially from that of Norway.

It is not denied that co-ownership of land was the rule in Norway in former times. Such of the old land laws as were not devoted to rules of succession consist almost entirely of provisions regulating the rights of co-owners. But it was not the co-ownership of the Village or the House Community. It was the co-ownership of what are known in England as co-parceners. The unit was a group of brothers or sisters, and not a House or Village Community. It was a group that was perpetually being broken up. Co-parceners anxious to join Viking and trading expeditions, and unable to find support out of the small share to which they were entitled, were constantly selling or leasing their land to the head of the family, the brother, generally the eldest, who had the *Aasædesret*, or right to occupy the family homestead, or *Hoved-gaard*. The group seems seldom to have outlasted a generation. It is to the occupation of this group, the creature of the old *odel* Norse tenure, to which I cannot help thinking are due a great number of the phenomena, which are now unhesitatingly attributed to House or Village Communities. Most, if not all the phenomena, which Nasse discovered in England appear in the old Norse laws as arising out of the mutual relations of odelmen who had not exercised their right of partition, a right which seems to be co-eval with the system.

The existence of shifting severalties, for instance, is generally considered as conclusive evidence of an old land community in some form or other, but it is quite clear that amongst Norsemen the conclusion is not justified. In Viga-Glum's Saga we find that shortly after the death of Eyiolf of Thverà, his property was divided amongst his sons in severalty, with the exception of one portion of exceptional fertility, which it was arranged should be farmed for a year by each son in turn. Here is clearly a case of a shifting

severalty that had no connection with a community of any kind. Turning again to the old laws, we find allusion to scattered allotments, the common enjoyment of the *Udmark*, or waste, the restriction of cattle to be turned on to the *Udmark* to the number each man could support through the winter, lammas lands, elaborate fencing, and harvesting rules for the *Hjem-mark*; in fact, all the principal characteristics of the Village Community, and all distinctly expressed to arise from the mutual relations of odelmen. Thus, however valuable these phenomena may be as indications of the interior economy of the Village Community, wherever a Village Community is shown to have existed, it is clear that by themselves they are insufficient to establish the existence of a true village community, and especially in the face of so stubborn a fact as the non-existence of the village itself.

Let us for a moment follow the example of Sir Henry Maine, and examine the position from the light of Colonial phenomena. Fortunately, there is abundance of material for this. The Norsemen were the fathers of modern colonisation. Numerous colonies were founded by them about the same period in the islands of the North Sea, at a time when race-tendencies alone would guide the settlers in fixing the form of the settlements. The forms such settlements took are then free from the taint of foreign experience, and may be safely searched for traces of what these race-tendencies were. The result of such a search is surprising in its clearness. Let us first take Iceland. This island was first colonised in the ninth century by men whose intense love of the old Norse land system could not brook the semi-feudal reforms of Harold Haardraade. In the *Land-nama-bok* we have a full account of the way in which the settlement was made. The malcontent families, in whom it is only fair to suppose the old Norse instincts were not exceptionally weak, arrived separately from all parts of

Norway by different routes, and without holding any communication with one another. In every case the settlement was made on the basis of the absolute ownership of the Head of the Family. In no single instance did anything like joint occupation by a community take place. The island, like Norway, was unoccupied; the settlers were under no control but that to which they themselves agreed; the process of settling was entirely unhampered. Had any tendency to co-ownership existed it must then have been in the full vigour of its youth, not weakened by the forces of centuries, as in the case of the Pilgrim Fathers, and it must have shewn itself in some form or other. In the face of such evidence as this, little more seems to be required. But there is another class of colonies where the conditions were entirely changed, which must not be passed unnoticed. These are the colonies in Man and the Sudreys, which were settled by a considerable population before the arrival of the Northmen. These islands had long been inhabited by Celts, and probably also by a still earlier people of non-Aryan blood. Here, then, unless Celtic influences have been exaggerated, we should expect to find traces of a joint-ownership. And this is, in fact, the case. It has long been known that in Orkney and the Shetlands a flourishing village system has existed. It is here that we find, perhaps, the most pronounced and unmistakeable traces of it in Western Europe. The system, in a ruinous condition, exists to this day under the old Norse name *Udal*, pointing to the fact that it is not the survival of a pure Celtic institution, but the remains of the national system established by the Norse settlers, and modified into a communal form by the influences with which it was surrounded. In Man, too, the community was an essential feature of the land system. A curious light is thrown on this as well as upon the way in which Teutonic conquerors may have been influenced by the existing system and even

have adopted it, by a passage in the *Chronica Regum Manniæ et Insularum* (edited by Professor Munch, Christiania. 1880). Under the date 1316 occurs the following entry:—"Dies Ascensionis Dominicæ, mane ad ortum solis, Ricardus de Mandeville et fratres ejus cum aliis magnatibus et malefactoribus de Hybernia, applicuerunt ad portum de Ranaldswath cum armis et vexillis et magno apparatu, et terram petierunt. . . . Sub hac forma ad terræ *communitatem* nuntios miserunt talia petentes, at *communitas* respondit se eisdem nihil velle dare sed eis in campo obviare debellando."*

Thus, we find in every case, that where Celts have settled land communities have arisen, and where Teutons have settled on unoccupied lands such communities have not arisen. Surely, we are justified in doubting whether, after all, the agricultural community is not Celtic rather than Teutonic. However great the interest of an enquiry into the nature of the pure Teutonic land system, it would be out of place here. I believe it capable of demonstration that it was a system akin to the Socage tenure of England and the *odel* of Norway: a system with the fundamental ideas of land vested in the undying family, and taking the form of a succession of absolute and several life estates. Such an enquiry must necessarily be long and intricate. Enough has now been said to shew that there is grave reason to doubt whether the Joint Ownership of land is so essential a feature of the Teutonic polity as has been supposed, and whether such a state of things is not actually foreign to Teutonic instincts. Whatever may

* [We leave our valued contributor's text as it stood, but under protest as regards the argument which he apparently bases on the sense affixed by himself to the expression *communitas*. We cannot entertain any doubt that this simply denotes the *universitas incolarum Manniæ*, as it would have denoted the *universitas incolarum* of a town in Mediæval Latinity, according to Ducange.—ED.]

be the normal form of land-holding amongst Germanic peoples, it is clear that we do not stand firmly enough to raise the theory of Land Communities to the dignity of a factor in politics, by deducing from it an inherited tendency to those socialistic forms of landed property which, whether rightly or wrongly, are now being so extensively advocated. Before concluding, I wish to make it clear that I do not assert that the system in question is any more purely Celtic than it is purely Teutonic. How much Celts owed to non-Aryan peoples whom they absorbed or displaced we do not, and probably we never shall know. The evidence on the whole subject is as yet very incomplete, but judging from Russia, India, Java, and the Sudreys, I cannot help thinking it possible that before very long it will broadly appear that any tendency to Common Ownership of land which may exist in a people is in direct proportion to the amount of non-Aryan blood which may run in their veins.

JULIAN S. CORBETT.

IV.—FOREIGN MARITIME LAWS.

II.—ITALY. CODE OF COMMERCE. BOOK II. TITLE II.

Of the Commander.

ART. 496. A captain (*capitano*) or master (*padrone*) placed in command of a vessel is responsible for his own defaults, even of a trivial nature, committed in the course of his duty.

The responsibility of the captain in the cases where it is imposed upon him by the present Code, only ceases on proof of difficulties occasioned by accident, or by circumstances beyond his control (*da caso fortuito o da forza maggiore*).

Cf. B. 12, 21, F. 221, 230, G. 478, 479, S. 676, 682, H. 345, 349, P. 1363—1365, R. 890, 894, E. 35, 45, Sw. 49, N. 65.

Macl. 172; M. and P. 120; News. 160.

497. A master cannot refuse to load goods, the carriage of which he has undertaken, on the ground that they are not adapted to the hatchways, decks, or stowage of his vessel.*

R. 1015 (2).

Ritchie v. *Anderson*, 10 East, 296; M. and P. 76, 315. *Turnbull* v. *Black*, Hume (Sc.) 300.

498. A captain is responsible for goods laden.

He gives a receipt in the form of a bill of lading.

A captain is not responsible for valuables (*effetti preziosi*), specie, or notes which have not been declared.

A master is similarly responsible for all damage whatsoever sustained by goods which he has loaded on the upper deck of his vessel without the consent, in writing, of the shippers. Consent is presumed in coasting voyages limited to the administrative maritime department in which the goods are shipped and an adjacent department, and in the navigation of rivers and lakes.

Cf. B. 13, 20, 88, F. 222, 229, 292, G. 478, 479, 564, 565, 567, H. 345, 346, 348, 350, R. 890, S. 685, 761, 799, P. 1363—1365, 1391, 1524, Sw. 83, 86, 103, E. 36, 44, 112.

Macl. 369, 380, 388, 414; M. and P. 37—39, 315, 343; News. 57, 68, 96.

499. It is the duty of the captain to engage the crew of the vessel, and to settle the rates of pay of the persons composing it; which he will nevertheless do in concert † with the owners or charterers when he is at the place where they live.

Cf. B. 14, F. 223, G. 480, 495, H. 343, S. 639, P. 1366, R. 935—943, Sw. 29, 41, N. 10, E. 37.

M. and P. 128, 727; News. 95.

* This entails on the captain the obligation of inspecting any unusual goods, such as machinery, &c., before signing a charter party.

† See Art. 74 of the Order for putting the Commercial Code in force (*post*).

500. A captain must keep a nautical journal divided into books as follows :—

A general Account-book;

A Log-book (*giornale di navigazione*) ;

A Cargo-book or manifest (*giornali di boccaporto o manuale*);

An Inventory (*inventario di bordo*).

The books above-named cannot be made use of until each leaf has been numbered and marked by the Maritime Official appointed for the purpose, and they must be kept in accordance with the dispositions of Art. 25,* the rules next following being observed.

The general Account-book must contain everything relating to the captain's duties as to crew and passengers, the goods shipped, the important incidents of the voyage and consultations held, receipts and disbursements on ship's account, and generally everything that concerns the interests of the owners and shippers, and which may give rise to a charge or legal claim, with the exception of the special remarks to be entered in the other books.

In the Log-book must specially be entered, the course steered, the distances run, manœuvres executed, geographical, meteorological and astronomical observations, and everything relating to the navigation.

The Cargo-book or Manifest, must contain the dates and places of shipment, the nature, quality and quantity of the goods shipped, their destination, the names of the shippers and consignees, the place and date of discharge, and everything else concerning the cargo.

The Inventory† must show the equipments, rigging,

* Art. 25. The above-named books must be kept in order of dates consecutively, without blank spaces, words left out or carried into the margin, there must be no erasures, and if it is necessary to cancel anything, it must be done in such way that the words cancelled may be clearly legible.

† See Art. 71 of the Regulations for putting the Commercial Code in force (*post*).

stores and instruments with which the vessel is provided, and every alteration made in those articles.

Regulations for the uniform keeping of the nautical journal and its component books, as well as for the verification of the Inventory in accordance with the dispositions of the Maritime Law, are settled by regulations, published by Royal decree.

B. 15, F. 224, G. 486—488, H. 358, S. 646, P. 1377, R. 911, 927, Sw. 33, 34, 68, N. 19, E. 38, 39.

M.S.A. 1854, §§ 194, 221, 244, 256, 259, 264, 280—287, 328; M.S.A. 1871, § 5; M.S.A. 1873, § 4.

501. It is not obligatory to keep a nautical journal in river and lake navigation, for voyages by vessels of less than 50 tons, which do not extend beyond the Continental and insular coasts of the Kingdom, the islands of Corsica and Malta, and the small islands adjacent to them, the coast of Provence as far as Cette, the further coasts of the Adriatic as far as Vallona in Albania, the coasts of Algeria and the Regency of Tunis, and their respective islands.*

Cf. G. 489, Sw. 33.

502. A master must have his vessel surveyed in the circumstances and manner laid down in the Mercantile Marine Code.†

Before sailing he must assure himself that the vessel is perfectly fit for the voyage to be made, and that it is properly loaded and stowed, even where he has employed special stevedores (*stivatori*).

Cf. B. 16, F. 225, G. 480, H. 347, S. 648, P. 1378, Sw. 28. 40, N. 11, E. 40, R. 891, 892.

Macl. 319. See also as to ships alleged to be unseaworthy, M.S.A. 1871, § 7; M.S.A. 1876, § 5; M.S.A. 1872, § 12; M.S.A. 1875, § 6, 22—24, and as to masters' duties with regard to grain cargoes, M.S.A. 1880 (43 & 44 Vict., c. 43).

* See Art. 522 (*post*); and also Art. 75 of the Order for putting the Commercial Code in force (*post*). In the United Kingdom coasters are not bound to keep official logs. M.S.A. 1854, § 280.

† See Mercantile Marine Code, Arts. 77—84 (*post*).

503. A captain must have on board

(1.) The ship's register (*atto di nazionalità*).

(2.) The muster roll or ship's articles.

(3.) The bills of lading and charter parties.

(4.) The reports of survey (*atti di visita*).

(5.) The receipts for payment of, or certificates of, bail for customs duties.

Cf. B. 17, F. 226, G. 480, H. 357, 358, P. 1379, N. 2, 11, 25, E. 41, R. 837, 906, 945, 1013, Sw. 4.

M. and P. 139—143 ; News. 95.

504. A captain must be personally in command of the vessel when entering and leaving harbours, creeks, narrow channels or rivers.

He must employ a special pilot at the ship's expense in all places where it is declared compulsory by the Government of the Realm, and prescribed by rules or local custom in foreign countries.

Cf. B. 18, F. 227, G. 484, S. 649, H. 361, 363, P. 1368, 1383, E. 42, N. 18, R. 908.

M. and P. 137, 249 ; Macl. 190, 389.

505. In case of a breach of the dispositions of Articles 500, 502, 503 and 504, the captain is answerable for damages towards those interested in the vessel and her cargo.

Cf. B. 19, F. 228, G. 478, 479, H. 345, 346, P. 1363, S. 676, Sw. 49, E. 43, R. 892, 909.

506. A captain, in the place of residence of the owners or charterers or that of their authorised agents, cannot, without special authority, repair the ship, or purchase sails, ropes, or other things intended for the ship's use, or charter the vessel, or borrow money on account of the ship or cargo.

Cf. B. 22, F. 232, G. 496, 497, 503, H. 371, S. 641, P. 1344, 1393, Sw. 41, 42, 127, N. 11, E. 47, R. 893, 1000—1003.

M. and P. 155 ; Macl. 143.

507. If the vessel is chartered with the consent of the owners or by the vote of the majority, and any one of the co-owners declines to contribute to the expenses necessary

for the voyage, the captain may be authorised by the Tribunal of Commerce, or if there is none, then by the Prætor, twenty-four hours after notice given to the person refusing to take up his quota on his account on bottomry (*a cambio marittimo*) or by mortgage (*pegno*) of his share in the vessel.

Cf. B. 23, F. 233 and F. (1874) 28, G. 467, H. 323, 324, 342, S. 614, P. 1359, 1380, Sw. 7, N. 6, E. 48, R. 828.

W. and B. 22.

508. In the course of the voyage, a captain may, after showing the necessity by a formal declaration signed by the principal members of the crew, make use of things on board the vessel for the service of the ship, on condition of paying the value for them.

Cf. B. 24, F. 234, G. 497, 503, 681, 686, H. 324, 372, S. 643, 644, 826, P. 1394, Sw. 42, 47, 127, 179, N. 11, 95, 97, E. 49, R. 1059.

M and P. 156—158 and Chap. VIII.; News. 100, 198; Macl. 131, 147.

509. If, in the course of the voyage, money is needed for repairing, purchasing provisions or other urgent need of the vessel, the captain must, if possible, announce the fact at once to the charterers, shippers, and consignees, and after having stated the necessity in the manner laid down in the preceding Article, he may be authorised, if within the Realm, by the Tribunal of Commerce, or if there is none, then by the Prætor, and in foreign countries by the Royal Consul or his deputy, or if there is none, then by the local Magistrate, to obtain the necessary sum by loan or by bottomry, by pledging or selling the cargo or by giving a lien on it, to the persons actually supplying materials, equipments, provisions, and labour.

The bottomry bond (*titolo del prestito a cambio marittimo*) and the documents to prove the other operations above-mentioned must be copied in the manner prescribed in this Code, and noted in the Ship's Register by the Maritime Official, or Consul, or other authority who has authorised it at the captain's instance, within ten days from the date

of the contract, under penalty of losing their grade of privilege.

A sale of cargo must be by public auction.

The owners of the ship, or the captain as their representative, must account for goods sold at the price they would fetch in the place and at the time of the vessel's discharge.

A sole charterer, or the several shippers, if they agree, can prevent the sale or pledging of their goods by discharging them and paying freight in proportion to the portion of the voyage accomplished (*pro ratâ itineris peracti*). If the consent of one or more of the shippers is wanting, then those who avail themselves of this course (discharge their goods) must pay freight in full on their part of the cargo.

Cf. B. 24, 156, F. 234, G. 497, 503, 681, 686, H. 324, 372, S. 643, 644, 826, P. 1394, Sw. 42, 47, 127, 179, N. 11, 95, 97, E. 49, R. 912, 1060, 1061.

M. and P. 156, 158, and Chap. VIII.; News. 100, 198; Macl. 131. 147.

510. The captain may, in urgent cases arising in the course of the voyage, give notices, and even commence and carry on actions in the name and for the interest of the shipowners, in all matters relating to the vessel and voyage for which he is in command.

Similarly, third parties, elsewhere than in the place of residence of the owners, or that of their agents, may serve notices and commence and carry on proceedings against the captain, in matters concerning his own actions and those of the crew, or on contracts made by him in the course of the voyage. Notices must be served on the captain personally, or on board the ship.

The owners can at all times take up (*riassumere*) proceedings by or against the captain.

Judgments against the captain do not deprive the owners of the right of abandoning the vessel in accordance with the provisions of Art. 491.

B. 230, 231 as to collisions, G. 496, 502. In France, in matters of Maritime Prize Decisions of the Council of Prizes, 29 Prairial, An 8, and 17 Niv.

An 9, and see Pardessus, *Droit Comm.* Vol. II., p. 224. In Portugal and Holland, the ships' husband represents the owners. P. 1343, H. 327, Sw. 14.

M. and P. 21, and C.C. Rules, 1875, O. XXXIII. R. 7, and Merchant Shipping Act, 1854, § 529.

511. Before leaving a place where the captain has made unusual disbursements, or contracted debts, he must forward to the owners or charterers of the ship, or their agents, a statement of account signed by himself, both of the expenses incurred, with reference to vouchers (*documenti giustificativi*), if there are any, and of the debts, with the names and surnames and places of residence of the creditors.

If the vessel is loaded on account of owners or charterers, the captain must forward to them an account of goods loaded and their price.

Cf. B. 25, F. 235, G. 503, H. 377, S. 659, 660, P. 1398, Sw. 48, N. 17, E. 50.

M. and P. 139.

512. The master who unnecessarily contracts debts, pledges or sells cargo or provisions, or who brings into his accounts fictitious losses and disbursements, is liable personally to the charterers and to all concerned to repay money, and pay for the articles, and also to make good damages sustained, in addition to criminal proceedings, if there are grounds for them.

Cf. B. 26, F. 236, G. 497, 503, 504, 507, H. 375, S. 684, P. 1400, E. 51, N. 108, R. 914.

M. and P. 157, and Chap. VIII.; Macl. 139; News. 100, 143.

513. A captain cannot sell the ship without the special authorization of the owners, except in the case of its being condemned as unseaworthy.

The unseaworthiness must be declared, and the authorization of the sale pronounced, if within the Realm, by the Tribunal of Commerce, and in foreign countries by the Consular officer.

The sale must be by public auction.

Cf. B. 27, F. 237, G. 499, H. 376, P. 1401, S. 593, Sw. 47, E. 52, R. 812, 915.

M. and P. 578 *et seq.*; Macl. 151 *et seq.*; News. 101.

514. A captain who is engaged for a voyage is bound to complete it, under penalty of making good all damages and expenses sustained by the owners and charterers in consequence of his default. If the ship is condemned as unseaworthy, the captain must exert himself to the utmost to procure another vessel to carry on the cargo to its destination.

Cf. B. 28, 94, F. 238, 296, G. 484, 566, 634, H. 354, 361, 478, P. 1370, 1525, S. 657, 777, N. 9, 59, Sw. 26, 27, 114, E. 53, 115, R. 895, 898, 1082, 1095.

M. and P. 154, 159, 321; Macl. 399; News. 100, 127.

515. A captain who sails on shares (*a profitto comune sul carico*) in the cargo (freight) cannot trade on his own account, unless there is an agreement in writing allowing it.

In case of a breach of this enactment, the goods shipped by the captain on his own account are confiscated for the benefit of the other persons interested.

B. 29, 30, F. 239, 240, G. 513, 514, H. 353, P. 1403, 1404, S. 656, E. 54, 55, R. 885.

M. and P. 122; Macl. 172; News. 113.

516. A captain, on arrival at his destination, whether outward or homeward bound, or in a port of call whether voluntary or from stress of weather, and also in case of shipwreck, must have his nautical journal inspected by the proper public officers. If anything unusual has happened to the vessel, the cargo, or the people on board her, the captain must in addition report the circumstances, as well as carry out the regulations of the Mercantile Marine Code.*

The Report must state the place and time of sailing, the course pursued, the perils encountered, the troubles on board the ship and in general all the important incidents of the voyage.

Cf. B 32, F. 242, G. 488—492, H. 379, 381, P. 1405, S. 650, 651, R. 903, E. 57, Sw. 37, N. 21. In these two last cases, the report or protest is only necessary in case of danger, and the production of the log is only requisite under similar circumstances in Norway.

M. and P. 150, News. 103, 39 & 40 Vict., c. 36, § 50.

* See Arts. 115—119 of that Code (*post*).

517. The report* must be made as soon as possible, and not later than 24 hours after arrival or putting into port, before the president of the Tribunal of Commerce, or before a judge appointed by him, and if there is no Tribunal then before the Prætor, if the vessel arrives or puts into a port within the Realm, and before the Royal Consul or his deputy, or failing these before the local authority, if in a foreign port.

A Report made within the Realm must be lodged in the Registry of the Tribunal of Commerce; for this purpose the Prætor must forward it without delay to the President of the Tribunal.

Cf. B. 33, 34, 35, F. 243—245, G. 488—492, H. 380, 381, 383, P. 1406—1408, S. 650—651, Sw. 37, N. 20, E. 58—60, R. 903.

M. and P. 144, 700, Merchant Shipping Act, 1854, § 279, Customs Consolidation Act, 1876, § 50.

518. The President, Prætor, or Consular officer who receives a report must verify the facts therein stated, by interrogating the members of the crew, and, if possible, the passengers, separately, and not in the captain's presence. The answers must be taken down in writing, and he must besides collect by every means allowed by law such fuller information and proofs as may be available according to the circumstances of the case.

The verification above mentioned must take place as soon as possible, and the day appointed for the purpose must be announced gratis to the public by posting a notice (*affissione*) on the door of the office in which the report is lodged, in the nearest exchange, and in the vicinity of the place where the ship is anchored, and in any other suitable place.

Persons concerned and those who desire to act for them, even without being appointed agents, are allowed to be present (*assistere*) at the process of verification.

* See Art. 73 of the Order for putting the Commercial Code in force (*post*).

The report of these proceedings (*processi verbali*) must be appended to the Report.

Evidence is admissible to rebut the matters established by the Report.

Cf. B. 37, F. 247, G. 493, 494, H. 384, P. 1409, S. 652, Sw. 35, 38, 39, N. 20, E. 62. The proviso as to the absence of the captain at the examination of the crew, &c., is peculiar to the new Italian Code.

M.S.A. 1854, § 448.

519. Reports which are not verified are not admitted to discharge the liability of the captain, and are not admissible as legal evidence, except when the captain alone is saved from shipwreck in the place where he has made his report.

B. 37, F. 247, G. 493, 494, H. 384, P. 1409, S. 652, Sw. 35, 38, 39, N. 20.

M.S.A. 1854, § 448.

520. Except in a case of urgency, a captain cannot discharge anything from his vessel before his report is made and verified.

Cf. B. 38, F. 248, E. 63.

Customs Consolidation Act, 1876, §§ 50, 53.

F. W. RAIKES.

V.—CONFLICTING JUDICIAL VIEWS ON THE MARRIED WOMEN'S PROPERTY ACT, 1882.

THE perils and vicissitudes of a point of construction were never exhibited in a more striking manner than in the case of certain material words in section 5 of The Married Women's Property Act, 1882. From the moment of the passing of the Act it was manifest to everybody (except perhaps those who framed it) that the words of this section were calculated to give rise to a sharp conflict of opinion. The section gives to a woman married before the Act, to have and to hold, &c., in a particular manner, all property, " her title to which, whether vested or contingent, and whether in

possession, reversion or remainder, shall accrue after the commencement" of the Act; and it was clear that the question must arise, whether or not these expressions include property which was in contingency or remainder before, and vests or falls into possession after, the "commencement." In the first reported case on the point, *Baynton* v. *Collins*, L.R. 27 Ch. D. 604 (Chitty, J., 1884), a decision was given, with full confidence, in the wife's favour. This case was followed as an authority in *In re Thompson and Curzon*, L.R. 29 Ch. D. 177 (Kay, J., 1885, March 9), and *In re Hughes's Trusts*, W.N. 1885, 60 (Pearson, J., 1885, March 14), but the Judges, in these two cases, declined to express their individual opinions, so that it was left an open question whether they sympathised with Mr. Justice Chitty's views or not. After these cases, however, came *In re Dixon; Dixon* v. *Smith*, 54 L.J. Ch. 964 (Bacon, V.-C., 1885, April 29), in which the venerable Vice-Chancellor dealt boldly with the point on its merits, and decided without hesitation in favour of the wife. Up to this time, then, the women of England had had a good time of it, two of the Chancery Judges having declared for them *con amore*, while two more had given their allegiance without apparent reluctance, and no breath of hostility had been raised against them. But now came a change which must have taken the next two married women by surprise. In *In re Tucker; Emmanuel* v. *Parfitt*, 54 L.J. Ch. 874 (Pearson, J., 1885, July 2, 7) and *In re Adame's Trusts*, 54 L.J. Ch. 878 (Kay, J., 1885, July 15), the very Judges who had decided on the authority of *Baynton* v. *Collins* refused to be bound by it any longer and rejected the wife's contention in no doubtful language. A few months later, Mr. Justice Chitty himself, in *In re Hobson; Webster* v. *Rickards*, 34 W.R. 195 (Chitty, J., 1885, December 14), also decided against the wife, in deference to Justices Pearson and Kay, though he intimated clearly

that, in his own mind, he was not disposed to relinquish his former opinion. At this stage of the matter, then, as far as the Reports shewed, there were three Chancery Judges who had decided both ways, and one who had decided singly for the wife; while, as to individual opinions, two Judges, Mr. Justice Chitty and V.-C. Bacon, were in favour of the wife, and two, Mr. Justice Pearson and Mr. Justice Kay, were against her.

Under the circumstances above described, no one will be astonished to hear that an unreported case, *Reid* v. *Reid*, said to have been decided by Mr. Justice North, for conformity, in the wife's favour, was set down for appeal on the part of the husband, that Mr. Justice Chitty's second case was set down for appeal on the part of the wife, and that a new case, *In re Frere's Trusts*, was brought before the Court of first instance presided over by V.-C. Bacon. The first mentioned case was decided against the wife on January 22, 1886, and, as a natural consequence, the Vice-Chancellor decided against the wife on January 23. The appeal in *In re Hobson; Webster* v. *Rickards* will, it is presumed, be withdrawn.

This curious history gives rise to some grave reflections. From time immemorial we have been told of the law's respect for "precedent," and have been accustomed to hear of one judge following another. But we have also heard, of late years at least, that although a particular Judge has decided one way, any other Judge of equal jurisdiction may decide the other way if he thinks proper. These two principles cannot always work harmoniously together, and there is scarcely a barrister in practice who has not sometimes complained that an adverse precedent was followed when he was right in principle, or that a decision on principle has foiled him when he was clearly supported by precedent. These mishaps, however, if only occasional, are accidents which cause little

surprise, mere incidents of the time-honoured "uncertainty of the law;" no one thinks of them as constituting a serious grievance. What has happened with respect to the Married Women's Property Act is rather more serious, for the same Judges, dealing with the same point, have at one time followed precedent, and at another set precedent at nought. The strange result has been, that while three wives have triumphed over their husbands, three husbands, by the authority of the same Judges, have triumphed over their wives. It seems unlikely that the matter will rest here. We must venture to think that two out of the four Chancery Judges who have expressed their individual views are "convinced against their will"—with the usual result; and if this be so, may not these two be right and the others wrong? It is true that the matter has been settled, for the present, by the Court of Appeal; but considering the determined difference of opinion in the Court below, might there not also be a difference between the Court of Appeal and the Court of last resort? It seems impossible to feel thorough confidence in the construction at present adopted without this final test; and it is to be regretted, not only that so much litigation has been caused by an ambiguity which ordinary care would have prevented, but, still more, that a course has been pursued which will cause three or four decisions to be declared erroneous, whichever of the two constructions may ultimately prevail.

If the question should come before the House of Lords —as it must, it would seem, if the ownership of any important property should depend upon it—the counsel for the wife, though it would not become him to be over-confident, should by no means despair of success. The truth is, we believe, that the section is really ambiguous, and that no confidence of assertion on the part of those who see it from one point of view will ever convince those who see it from the other. The

arguments which have, for the time, prevailed against the wife are certainly not conclusive. Of these, the most conspicuous is that which rests on the supposed necessity of unity of accruer. It is said that the section contemplates one accruer only in the case of any one property ; so that, if the property has come to the wife in remainder before the "commencement," the falling into possession after the "commencement" is not an accruer of title within its meaning. But the words of the section are, "her title to which . . . . whether in possession, reversion, or remainder shall accrue," and these words, it may be contended, are grammatically and logically identical with *her title to which . . . . whether a title-in-possession, a title-in-reversion, or a title-in-remainder shall accrue.* If this be so, it would seem that the section, taken as it stands, compels us to look upon a title-in-possession and a title-in-remainder as two distinct things, each of which may accrue separately from the other. Let this be once admitted, and the case seems clear for the wife, for the accruer of the title-in-possession after the "commencement" will bring the property within the section, whether there has been an accruer of the title-in-remainder before the commencement or not. It is open to serious argument that this is the true meaning of the section, and that those who use the "accruer" argument against the wife have been led to mistake its purport by reading *title shall accrue-in-possession*, &c., instead of *title-in-possession shall accrue*, &c., so that they have overlooked the effect of its discriminating language and have assumed that there can be only one title, and therefore only one accruer of title. No doubt their reasoning would be correct if only one title were contemplated; but if the section tells us that there may be a duality of *titles*, it seems to follow reasonably that there may be a duality of *accruers*.

But it is said that the doctrine of a double accruer would lead to two anomalous results, namely, that there would be

a fetter while the property was in remainder, which would be removed on its coming into possession, and that the married woman could not deal with the property until it fell into possession, though she could have done so if it had come to her in remainder after the "commencement." It may be asked, *per contrà*, why are such results to be considered anomalous? As to the first point, it may be urged that it seems perfectly natural for the Legislature to leave unaffected, until possession, the husband's right, already acquired *before* the "commencement," of giving or withholding his consent to alienation under the Fines and Recoveries Act or Malins' Act, and yet, when the possession comes, accruing *after* the "commencement," to give the property to the wife. A doctrine thus discriminating between the remainder which came before and the possession which came after is quite in harmony with the general object of the section, which is to exclude from the Act that which the wife obtains before, and to include in it that which she obtains after, the "commencement." As to the second point, a similar answer may be given; the remainder which came to the wife before the "commencement" is naturally under the old law, and that which came to her after is naturally under the new law, so that no anomaly is imported.

It has been said that, if the view in favour of the wife be accepted, the section will be retrospective in its interference with the husband's rights by marriage. But, as Mr. Justice Chitty very clearly pointed out, it *must* be retrospective in some respects, whatever be the decision on the question under consideration, for it is incontestable that in the case of a title *first* accruing after the "commencement," the husband would fail to obtain the rights which the law, as existing at the time of the marriage, had taught him to expect. As the section therefore is clearly retrospective in one way, there is nothing unreasonable in supposing that it may be

so in another. It has been said, further, that an injustice might be done to a purchaser of a remainder, who might have the property torn away from him by a falling into possession after the "commencement," but this argument must have been used in mere inadvertence, for it is clear that, if the wife had alienated under either of the Acts above-mentioned, the property would be gone altogether, and would never vest in possession *in her*, so that the section would not be brought into play.

But the advocate of the wife will not be obliged to rely solely on the words of the section; he may point also to the analogy of covenants to settle after-acquired property, and to that of a decision on somewhat similar words in the Married Women's Property Act, 1870, section 7.* It has been said, as to the former point, that the analogy is not good, because such covenants should be construed as widely as possible; but it may reasonably be asked why? and even if the proposition be granted, why should not the words of the Legislature be construed on a similar principle? It may be urged that the same feeling—a desire to construe truly the words of the instrument, should be brought to both investigations, and that it cannot be conceded as an axiom that one provision is to be read liberally, and the other in a precisely opposite spirit. As to the Married Women's Property Act, 1870, we are not aware that anything has been said against the decision above referred to respecting it, and it will, no doubt, be brought forward if the anticipated contest should ever really arise.

In submitting the above remarks, we by no means wish to imply that a wife appealing to the House of Lords would necessarily be successful, nor do we desire in the slightest

* See *Lane* v. *Oakes*, 22 W.R. 709, deciding that, under a provision relating to property to which she "shall during the marriage become entitled," a married woman takes for her separate use property which is in remainder before marriage, and falls into possession after.

degree to impute want of judgment to those who take part with the husband. The section discussed is eminently one of doubtful interpretation, for the decisions on both sides (except those given merely for conformity) have been delivered in a tone which implied that the Court could not possibly see its way to any other course. The point is therefore one on which the most eminent persons have differed, and it is with no disrespect to those who have endorsed one view that we suggest the possibility of an ultimate decision being given in rehabilitation of the other.

Quarterly Notes.

The important character of the International Congress of Commercial Law held at Antwerp in September last, under the patronage of the King of the Belgians, and to which we had the honour to be invited on behalf of this *Review*, will easily be gathered from the brief account which is all that we can give in our current number. The ground which the Congress was intended to cover was very extensive, embracing, as it did, both Maritime Law, and the Law of Bills of Exchange. It was easy to guess that so vast a field would not be covered in the limited time necessarily at the disposal of one of a series of Congresses following each other in rapid succession, as was the case at Antwerp. But His Excellency Baron Lambermont, who was nominated by the King to the Presidency of the Organising Committee of the Congress, may well feel that he and the English, American, Continental and Oriental fellow-workers who answered to his appeal (delegates from Japan having been among those present), have cleared the way for a future session, in which the desired assimilation of Laws may be more closely approached, if not actually reached.

We observed with pleasure the very strong representation of the English Bar, a most unusual circumstance in the history of Foreign Congresses.

The Solicitor-General, Sir John Gorst, and Mr. Robinson, Q.C., accepted the invitation to the Congress extended to the English Bar. Sir Travers Twiss, D.C.L., Q.C., and E. E. Wendt, D.C.L., represented the Association for the Reform and Codification of the Law of Nations. Judge Peabody represented the U.S.A., M. Lyon-Caen, the Government of the French Republic, Comm. Roselli, the Government of the Kingdom of Italy. The Russian Government was represented by Chev. De Wrede, the Grand Duchy of Finland by Procurator-General de Montgomery, the Dutch Government by Prof. Molengraaf, the German Government by Dr. Dorn, President of the Bar of the Supreme Court of the Empire. The Austrian Bar was represented by our valued *confrère*, Dr. Lothar Johanny, Editor of the *Juristische Blätter* of Vienna. Servia was represented by Councillor Milanovitch, and far-off Japan by Dr. Roester, Member of the Supreme Court of Japan, as Delegate of the Japanese Government.

We summarise the above list, the official record not being yet in our hands, from an interesting account contributed to our contemporary, the *Belgian News*, of Brussels, for 10th October. We entirely agree with the estimate formed by their correspondent of the special interest and value attaching to the Congress, as the first in which Delegates from the hitherto unchanging East have come forward to assist their Western brethren in the work of putting an end to the Conflict of Laws on the points which formed the subject-matter of the deliberations of the Antwerp Congress. We have received, amongst other publications connected with the Congress, a useful manual entitled, *Sources Bibliographiques*, edited by the Secretaries of the Organising Committee, Messrs Nyssens, Dubois, and

Missotten. In this hand-book we are glad to see that some of the recent contributions to this *Review* by Dr. F. W. Raikes deservedly find a place, though the list of his contributions is imperfect. The English part, generally, is, as we rather expected, the least full and down to date, while most Continental literatures are well represented. We shall be glad to assist the Secretaries, if they decide to keep their useful work under revision for the next Session of the International Congress of Commercial Law.

* * *

Business men are becoming daily more alive to the fact that experts, skilled in the particular department of industry or science in respect of which a dispute has arisen, possess certain qualifications superior to those of judges and juries, who necessarily lack the requisite training for forming a correct judgment when the problem submitted to them for solution involves a technical knowledge of a trade, process, or invention. Moreover, they are beginning to realise that a speedy adjustment of their differences is as important to them as accuracy of decision. Hence, preliminary skirmishing in the shape of Statements of Claims, Defences, and Interrogatories are regarded as so many obstacles to expedition, interposed, it would seem, with the sole object of profiting the lawyers. Hence, likewise, their unwillingness to permit their cases to be hung up for an indefinite period at the Royal Courts, or it may be, the Assizes, with the probability, one might almost say the certainty, of multifarious appeals, bringing in their train ruin alike to victor and vanquished. Business men, moreover, chafe under the trammels of highly artificial rules of legal procedure, devised, to their thinking, as pitfalls to trip up the uninitiated and with the malicious design of obscuring judgment by the exclusion of most topics relevant to the matter in dispute. These, however, are not the only reasons which operate upon the layman's mind in favour of a resort to Arbitration.

Unhappily for those whose practice is "contentious," there are other and more efficient causes at work which stimulate the tendency of the Commercial community to forsake the ordinarily constituted tribunals of the country. Many a suitor has learned from costly experience that after having launched his action, he runs considerable risk of not getting it tried out, at least in the Common Law Divisions of the High Court of Justice. It is a matter of daily recurrence when a Commercial cause is ripe for hearing, when all the expense of the preliminary stages has been incurred, when heavy fees have been paid to eminent "silks" and rising juniors, and the parties with their witnesses have been dancing attendance at the Courts for days together in the hourly, one might say, the momentary expectation of their case being heard and determined, that the Judge, long before the plaintiff's counsel has finished his opening speech, appears to make the discovery of his inability (or that of the jury, if there be one) to dispose of the questions in issue, and peremptorily intimates that the cause must be relegated to Arbitration. The announcement takes no one professionally engaged by surprise ; nor is it received by them with feelings other than those of thinly-veiled satisfaction. Nevertheless, counsel, whom long experience has prepared for such discoveries, deem it incumbent, for the sake, it might seem, of keeping up appearances, to enter a feeble protest. The Judge, however, *vir pietate gravis*, strong in his *pietas*, and inexorable as Fate, threatens that unless an arbitrator be agreed upon by and between the parties, he will refer the issues compulsorily to one of the Official Referees. This threat rarely fails to produce the desired effect, and thus the Judge takes credit for the rapidity with which he clears his list, and counsel congratulate themselves upon being set free to attend to other engagements. To the unlucky and disappointed suitor, however, who sees his money flung away without appreciable result, the whole

proceeding appears like a travesty of Justice, wherein the occupant of the Bench acts as abettor to the Bar in a conspiracy to squander his substance and hinder him in the attainment of his rights.

This grievance is of comparatively recent origin. When the history of the Law of Arbitration comes to be looked into, it will be found that the decision of differences or disputes without any recourse being had to litigation was for a long time opposed, or at least viewed with disfavour, by the Courts from which matters were withdrawn. Those were the halcyon days, before the outcry about the "Block in the Law Courts," and when legal tribunals offered an unyielding resistance to every attempt to oust their jurisdiction. At the present time, the reverse is the case. To "shunt" litigation seems to have grown into a ruling passion with our Judicial magnates.

Another consideration which exercises a powerful influence in the direction of Arbitration is, the virtually unlimited control which the Bench has of late years acquired over that important factor in litigation—the Costs. Time was, when the unsuccessful party who recovered more than a nominal verdict could rely upon getting a judgment which would entitle him, at all events, to his taxed (not his *real*) costs; but, now, "Nous avons changé tout cela," and the question of costs is virtually in the unfettered discretion of the Judge presiding at the trial, who not only is empowered to deprive the successful party of a sum of money which oftentimes equals, when it does not exceed, the amount recoverable in the action, but may even order him to pay the costs of his defeated adversary! Small wonder then, that the parties should exhibit a preference for settling beforehand, upon some fixed and intelligible principle, the mode in which the costs of litigation shall be apportioned —a course which they can and usually do adopt by inserting a clause to that effect in their submission to Arbitration.

From the foregoing observations it must not, however, be rashly concluded that lay tribunals are, or are thought to be, as faultless as human fallibility can render them. Arbitrations, too, have their drawbacks. Their chief, and apparently, ineradicable vice lies in the protracted length to which they are capable of being spun out, and the excessive costs which are thus entailed. Freed from the salutary restraints imposed upon those who perform their duties in public, and alike ignorant of, and unfettered by, regulations framed for restricting judicial enquiries to the real questions at issue, the lay Arbitrator but too often strays aimlessly into by-paths, or is adroitly beguiled into irrelevant digressions; whereby an amount of time is wasted and expense incurred which the Judges do not scruple to stigmatise as "scandalous." To take a recent instance: the case of *Burton and another* v. *Ellis, Lever & Co.* came before a Divisional Court consisting of Huddleston B. and Lopes J., on 31st May last. The action was one brought to recover damages for amounts due for coal supplied, and the losses suffered by the plaintiffs through the defendant's default in having delayed to remove the coal delivered to him at the pit's mouth by the plaintiffs. There had been, as stated by one of the learned judges above-named, no complication as to the facts or law in the case, and yet, one witness was under examination for no less than eight days, and under cross-examination for as many more. Counsel for the defendant had taken no less than five days in opening his case, and from first to last the reference itself had extended over the unconscionable period of forty-four days of five hours and a half duration, out of which as much as two hours per diem were taken for adjournments for lunch. The Arbitrator's fees for the sittings amounted to £1,200, and the successful plaintiff brought in a bill of costs for £3,970, which included a daily refresher to the leading counsel of twenty-five guineas. In another case, that of *Sinclair* v.

Great Eastern Railway Company, referred to by Huddleston B. in the case just cited, the sittings lasted over twenty-four days. Such exposures are not infrequent, and indeed, the abuse must be a crying one to induce our Judges to speak severely of an institution to which they constantly compel unwilling litigants to have recourse. If, with the termination of the Arbitrator's investigation all ulterior proceedings were made to cease, there would, at all events, be less reason to complain than at present, and a considerable saving of time, temper, and money would be effected. As it is, however, the suitor who sanguinely supposes that his troubles end at the close of the reference, finds his theory rudely shaken by applications to the ordinary tribunals to make the submission a rule of Court, motions to enforce the award, motions to set it aside, followed by motions to review taxation, and it may be appeals to higher tribunals.

Other defects there are, such as the ability of either party to revoke a submission; the abortiveness of proceedings occasioned by the death of the Arbitrator, or the failure of one of the parties to appoint an Arbitrator; the complexity of the present methods of enforcing awards and the inability of Arbitrators to rectify even clerical errors in their awards, after publication, or to compel the attendance of witnesses resident in Ireland or Scotland; the intricacy of the law as to costs, and other minor matters, all of which a well drafted and comprehensive statute might, it is believed, satisfactorily remedy.

Ostensibly with this object, a Bill has been promoted during the past two Sessions of Parliament, by the London Chamber of Commerce. It is, however, but a first instalment of a more ambitious scheme. According to the Chamber's chosen spokesman, Lord Bramwell, who has charge of the Bill, a great and growing desire [illegible]sts for the substitution, except in a very few classes of [illegible]ses, of lay for legal tribunals. The Law, it is said, with [illegible] delays,

profits no one but its proficients, and it should therefore be the aim of traders to rid themselves of Law and the lawyers to the fullest extent possible. The malcontent Chamber, however, is not so sanguine as to imagine that it can carry out the whole of its far-reaching programme at once. Practical experience of men and things coming to their aid reminds the zealous members that so revolutionary a project might be viewed with alarm by their less adventurous supporters, whilst it would run the risk of shipwreck from the formidable opposition of those whose interests were attacked; so, with a commendable display of moderation and self-restraint, they appear willing, for the present at least, to confine their efforts within more modest bounds by concentrating their energies upon the Bill to which we have referred. Should the Bill pass, the way will, they think, be smoothed for the more sweeping measure of Reform which they have in contemplation.

By their manifesto, the advocates of the measure inform us that the law relating to Arbitration "ought to be simple, free from unnecessary technicalities, clear, and of moderate size"—desiderata which we should have thought were not confined to the law of Arbitration. Then they go on to deplore that "it is extremely complicated, is in many points obscure, and contained in numerous Acts of Parliament and a multitude of decisions which cannot all be reconciled." Here again, the law of Arbitration does not stand alone. The Bill, however, is "to put an end to this regrettable state of things." It is to "render intelligible what is now obscure, certain what is now doubtful, and to compress into one measure, what is scattered through a large number of volumes of Law Reports." It professes "to codify the entire body of the general law of Arbitration without proposing any change therein." The promises held out are so inviting that we have been induced to

examine the measure, in order to discover for ourselves to what extent they had been realised by performance. After devoting to its study the attention which its pretensions seemed to demand, we have reluctantly arrived at the conclusion that, viewed as a piece of Parliamentary draftsmanship, no less than as an earnest of reforms yet to follow, the result is discouraging. So salient are some of its defects, that we cannot bring ourselves to believe that the penetrating and logical intellect of Lord Bramwell could have adequately scrutinised it, prior to its introduction into the House of Lords. What a contrast it exhibits to the legislative proposals of a past generation! In those days, statutes seem to have been drafted by men more or less "fathers of the law" in the branch with which they dealt; but now, measures only too frequently bear traces of being the work of would-be social reformers, and of Chambers of various denominations, or of their legal advisers, acting, indeed, under a keen sense of an evil to be corrected, but without any very clear idea of how it arises, or how to grapple with the evil itself. Parliament, too, with its increased and multifarious functions, must have relaxed its former rigorous scrutiny, or we should not be victimised by a succession of legal enactments, due to the initiative of reformers whose energy has outrun their aptitude for law-making, which go to swell litigation, puzzle the judges, and disappoint the public who are led to expect a sort of legal golden age from this so-called amending and consolidating process. Should the Arbitration Bill pass into law, it will but add one more to the already too considerable number of such additions to our Statute-book.

Even tested by its own claim of being a correct statement of the existing Statute and Case law, the Bill must be pronounced a failure.

When it is remembered that every clause in the arbitration sections of the Common Law Procedure Act of 1854

has been interpreted at considerable cost to the public, it becomes a very serious matter to introduce alterations which, however slight, must have the effect of weakening the authority of existing decisions and opening up new grounds of contention. It might therefore reasonably be expected that in drafting a "Consolidation" measure, the original language would, as far as possible, have been studiously retained. The assumption, however, in this case has been ruthlessly falsified, for not only has the phraseology of the statutes which the Bill purports to re-enact been departed from, but the alterations are not justified by any apparent reason. Nothing but sheer perversity, it would seem, or an undue striving for originality, could have prompted the descent from modes of expression at once polished and exact, to the employment of English which, by no stretch of language, can be called either elegant or accurate.

Compared with many other branches, the law of Arbitration presents unusual facilities for consolidation, and, if confided to competent hands, the undertaking would well repay the labour; but it would be a grave misfortune to permit the law to be unsettled, as it inevitably would be, by the passing of this immature effort. The Bill, with some amendment, might possibly be worked up into a useful popular handbook for Chambers of Commerce and others whose knowledge upon the subject is not required to be profound or exact; but if placed on the Statute-book in its present form, it would be worse than useless; for it would, we believe, be nothing less than misleading.

* * *

We have been favoured from America with a copy of a very interesting publication, *Reports of Cases*, K.B., *t.* Geo. II., by JOHN DUNNING, LORD ASHBURTON. With Notes of Reference to English and American cases, by C. G. DELANO, of the Massachusetts Bar. (Boston: George B. Reed, 1885.) The publisher has prefixed a notice explaining how

it is that we receive from the United States a print from the MS. Reports of an English lawyer of the last century.

"Charles G. Delano, Esq., a lawyer residing at Northampton, Massachusetts, during a short stay in a Western State in the summer of 1884, discovered, in an interleaved copy of the first edition of 'Sayer's Reports,' manuscript copies of the cases given in this volume, each signed, 'D., Ld. A.'

"In a letter to me Mr. Delano says:—'I have recently had access to a valuable manuscript of select cases in the time of George the Second, by Dunning, Lord Ashburton, the celebrated English advocate. They are authentic, and very excellent specimens of the art of the reporter. The cases appear in "Sayer's Reports," but are there very imperfectly reported.'"

Three of the cases given in this volume appear in "Kenyon's Reports."

All the reports are of Crown Cases relating to Civil matters, heard and decided in the years 1753 and 1754. The friends, John Dunning, afterwards Solicitor-General, and Lord Ashburton, and Lloyd Kenyon, afterwards Chief Justice Lord Kenyon, stood then upon the threshold of the profession in which they were to attain such high distinction. In 1753, Dunning was 22 years old, Kenyon 21. The Judges before whom the cases were tried were the Chief Justice Sir William Lee, and his Puisnes, Sir Martin Wright, Sir Thomas Denison (grandfather of Speaker Denison, Lord Ossington), and Sir Michael Foster. The Chief, a judge somewhat disparaged by the facile pen of Lord Campbell, received a higher meed of praise in the more staid memoirs of Townsend and Foss. The three Puisnes seem to have been men sufficiently equipped for their duties. Of Sir Michael Foster, in particular, Sir William Blackstone speaks as "a very great Master of the Crown Law." The decisions of the Court appear to us to

be marked by soundness and discretion. We have examined such of Lord Ashburton's reports as are also reported by either Sayer or Lord Kenyon, or both (two only, *Rex* v. *Hunt* and *Rex* v. *Paddow*, appear to be reported by neither) with reports of the last two. We agree with Mr. Delano that Lord Ashburton's reports are superior to Sayer's. Of the cases of *Rex* v. *Burgess* and *Rex* v. *Goodhall* or *Goodall*, reported by all three, the former seems to us best reported by Kenyon, the latter by Dunning. We should be glad to know how Lord Ashburton's MS. found its way to America. It is, however, well known that our brethren, the Advocates of the United States, are sedulous collectors of such legal material as Lord Ashburton's Reports, as they render to English Judges the honour of setting a high value on their judgments, a compliment which is unstintedly reciprocated by English lawyers to the legal profession which has produced a Kent and a Story, amongst other distinguished masters of Jurisprudence.

It would appear from a passage in Townsend's *Lives of Twelve Eminent Judges* (Vol. I., pp. 38 and 39), that there exist, or existed, MS. Reports by Lord Ashburton, of cases reported in Strange, Salkeld, and Burroughs, which were ranked by Lord Kenyon above the reports of all three. It would be a great addition to English case law if these and similar MS. Reports, not to be found in the public legal libraries, could be traced and edited in a manner similar to *Dunning's Reports*. The reports of Mr. Justice (Sir John) Bayley, which are referred to in *Russell on Crimes*, would probably be found to be peculiarly valuable.

It only remains that we should renew our thanks to Mr. Delano and to his publisher for the valuable and elegant addition which they have combined in making to the shelves of legal libraries on both sides of the Atlantic. It was specially fitting that such a book as *Dunning's Reports* should issue from the "University Press, Cambridge, Mass."

Reviews.

The Law relating to Copyright and Trade Marks, treated more particularly with reference to Infringement. By JOHN HERBERT SLATER, Barrister-at-Law. Stevens and Sons. 1884.

This is the second work on Copyright which we have had under our notice within the last few months; and there are several others more or less well-known to the profession. Notwithstanding this, however, the subject is far from being exhausted, and we welcome Mr. Slater as coming nearer than most of his predecessors to the standard which we should like to see reached in making a special feature of the subject of Infringement. This question is one of the utmost practical importance; it is in fact the one point on which practitioners are at sea, even at the present time. A mere digest of the decisions is worse than useless, unless there is some attempt to deduce intelligible principles from them; and the attempt itself must fail unless the principles deduced are sound. We do not remember a single judgment in which really comprehensive rules have been laid down, and it therefore lies entirely in the hands of some author to elucidate them. They are assuredly to be found, but Mr. Slater has, we think, not yet lighted on them: we hope that in a second edition he may be more successful.

We differ from the learned author's proposition, stated on page 37, that there is any doubt whether copyright work can be appropriated for the purpose of improvement. There is none. It cannot be so appropriated even by the author himself, if he has sold the earlier work.

The part of the book devoted to Trade-marks is well and accurately done; the subject itself is not quite so intricate as Copyright.

The Law and Practice under The Bankruptcy Act and Rules, 1883, The Rules and Orders, 1884, and Board of Trade Orders, with The Debtors' Acts, 1869, 1878, County Court Rules thereunder, 1875-1884, The Bills of Sale Acts, 1878, 1882, and Rules of Court thereunder, 1883. By FRANCIS ROXBURGH, B.A., LL.M., of the Middle Temple, Barrister-at-Law. Knight and Co. 1884.

The Bankruptcy Act, 1883, and The Debtors' Act, 1869, together with The Rules, Orders, and Forms. By FRANK PITT-TAYLOR, of Lincoln's Inn, Esq., Barrister-at-Law. W. Maxwell and Son. 1884.

Before the Bankruptcy Act of 1883 came into operation, Mr. Roxburgh was to the fore with an edition of it arranged in alphabetical order, and to which we had occasion at the time to refer in terms of approbation. That small volume has now been followed by a larger work on the subject, which for clearness, conciseness and accuracy may vie with any of the numerous annotated editions of the Act which have as yet appeared, and indeed is superior to many of them. On the important point of the method of arrangement, Mr. Roxburgh is especially to be congratulated. It would have been difficult to have devised a more convenient plan for rendering the contents of a legal work readily accessible than the arrangement here adopted. The sections of the Act are printed intact, and in prominent type, so as to render them, at a glance, distinguishable from the notes of cases and cross-references which immediately follow each section. To facilitate reference, likewise, the numbers of the sections, rules, and forms to which each page relates are repeated in heavy type in the margin, the sections being printed rather larger than the rules while the forms are distinguished by the repetition of the word. We must not omit to remark that Mr. Roxburgh's compendious Index contains references, not only to the pages of his book, but also to the number of the section of the rule, thus forming an index to the Queen's printer's copies of the Act and Rules, and to any book where they are set out in numerical order. A Table of Cases with references to four sets of Reports precedes this handy volume. Enough has been said to shew that author and publisher have alike spared no pains to render this volume as complete and useful as possible.

We regret that we cannot speak in equal terms of praise of Mr. Frank Pitt-Taylor's edition of the Act. The pressure under which new editions are too often brought out seems to have left its mark upon the present issue, both in regard to its compilation and the material adjuncts of paper and type. No references are given to the Reports in the Table of Cases, nor are more than two sets of Reports cited in the body of the work. We have almost certainly not yet reached Finality in

our Bankruptcy legislation, and it will no doubt be possible for Mr. Pitt-Taylor to make the desired improvements in a future edition.

Trials for Murder by Poisoning. By G. LATHOM BROWNE, Barrister-at-Law, and C. G. STEWART, Senior Assistant in the Laboratory, St. Thomas's Hospital. Stevens and Sons. 1883.

Murder by poison is happily of comparatively rare occurrence in this country, a circumstance which may perhaps account for, though it cannot excuse, the want of medical knowledge which is sometimes displayed by those engaged in Courts of Justice. Indeed, the science of Medical Jurisprudence is all but a sealed book to those members of the Legal Profession who do not happen to have an extensive practice before our Criminal Tribunals. Ignorance in such matters is perhaps scarcely to be wondered at when account is taken of the vast and varied range of subjects in which every lawyer in the exercise of his daily avocation is required to be proficient. This unsatisfactory state of things might be remedied, to some extent at all events, and a wholesome impetus might be given to the study of an important branch of technical learning, if the Council of Legal Education and the Incorporated Law Society were to include Medical Jurisprudence in their curriculum of subjects for examination.

A recent case in the Supreme Court of Appeals, Va., *Ryan* v. *Commonwealth*, reported by a valued contemporary, *Virginia Law Journal*, 607 (Richmond, Va.), testifies to the importance of the subject in the United States, and similar testimony is borne by the Medico-Legal Association of New York, and the interesting *Journal* which it publishes.

As a valuable contribution to a much neglected department of study we welcome Messrs. Browne and Stewart's volume. It consists of judiciously selected reports of remarkable trials for murder by poisoning, with essays and notes explanatory of the nature, operation, and methods of detecting the various poisons supposed to have been employed. Besides compiling these reports from reliable and authentic sources, Mr. Lathom Browne has adopted the commendable plan of grouping the witnesses under the heads to which their evidence specially applies, dividing the scientific from the moral testimony, and, in cases of conflict between experts called for the prosecution and

those for the defence, giving the evidence of the latter immediately after the former. His abstracts, too, of the speeches of counsel and the charges of the presiding judges, accompanied by annotations when needed, shewing their application to points in the evidence and to the arguments adduced on either side, betoken industry and discrimination. Furthermore, the completeness and accuracy of the work from a medical standpoint are enhanced by the co-operation of Mr. Stewart, who has not only taken care to state correctly the scientific nomenclature of medical and chemical witnesses, but also by means of recent experiments specially undertaken with that object, to supply explanation of those points in the several trials about which the rival experts disputed, bringing to bear on them the latest discoveries in chemical science. It is no disparagement of Messrs. Browne and Stewart's abilities to hazard the opinion that neither of them singly could have produced so valuable a work. The chances are that the medical expert would be as little competent to estimate the value and effect of legal evidence as the advocate to descant upon the properties and characteristics of drugs. At all events, each of them is likely to be recognised as an authority only in relation to that particular science with which he has acquired a practical acquaintance, and hence it follows that when a work involving a profound knowledge of two such totally distinct sciences as law and medicine is the result of collaboration, a greater degree of accuracy and completeness may be expected from it, and a higher value will probably be attached to it by those for whose use it is designed, than if it had been the sole production of the lawyer or the toxicologist.

But Messrs. Browne and Stewart's volume may be serviceable in yet another direction, should it aid in attracting public attention to the defects in the present Poisons' Act—a topic which, judging from recent utterances, is provoking some discussion in medical circles. Whilst perusing the pages of trials for murder by poisoning we are painfully reminded that just as the Act of 1852 was powerless to prevent Madeline Smith, in 1857, from purchasing the arsenic with which she murdered her lover, so, too, the Pharmacy Act of 1868 places no obstacle in the way of poisoners, such as Fisher in 1871, Silas Barlow in 1878, not to speak of others too numerous to mention.

Though it may be impossible by legislation to prevent poisons

from getting into the hands of those who have made up their minds to procure and employ them for criminal purposes, nevertheless, many restrictions might be placed upon the sale and storage of deleterious drugs, such as would materially diminish the danger to which the public is at present exposed. In the preface to the work under review, Mr. Lathom Browne opportunely points out that the poisoner's field of operation is being yearly enlarged by the discovery of new poisons, each succeeding one more difficult of detection than the former. Death lurks in many unsuspected forms, and but for the parallel march of science supplying fresh tests and developing better processes, the poisoner would more often escape.

A warning note of the peril in which society stands owing to the unrestricted storage and sale of poisonous drugs was sounded by Professor Attfield at the annual Conference of the Pharmaceutical Society held in September, 1883, and by Dr. Meymott Tidy at the Congress of the Social Science Association, which took place in the month following. The former deplored the fact that the Pharmacy Act, 1868, which contemplated the supply of drugs by properly qualified persons only, was being extensively frustrated. Drugs of nearly all kinds, he complained, were being indiscriminately sold by unqualified persons—by barbers, booksellers, chandlers, confectioners, drapers, general dealers, grocers, hairdressers, herbalists, ironmongers, marine-store dealers, oilmen, printers, publicans, stationers, store-dealers, tailors, tobacconists, toy-dealers, and wine merchants. The latter, in an elaborate criticism of the whole field of this branch of Legislation, forcibly urged that the law regulating the storage and sale of poisons requires amendment. As to the best means of remedying the present evils no wide divergence of opinion seems to prevail. Professor Attfield would extend the principle and letter of the Pharmacy Act by enlarging its schedule so as to prohibit the retail sale of most of the simple and compound drugs of the Pharmacopœia by any except chemists and druggists, with the saving of all rights to medical practitioners. In his opinion the dealing in patent medicines should be placed upon the same footing as that in other medicines, and he would abolish the illusory Government stamp, which it is impossible to prevent ignorant persons from regarding as a warranty. An alternative suggestion in respect of these dangerous compounds, and one well worthy of consideration, has been made by Mr. Lathom Browne, who recommends that

the Government stamp should be refused to any medicine, the component parts of which have not been disclosed to an official analyst and reported upon favourably.*

Dr. Tidy, for reasons which appear to have much force in them, would abolish the schedule of names of the various bodies designated by the Pharmacy Act as poisons, substituting in its stead a carefully-framed definition. "Poison," he proposes to define as "anything which, otherwise than by the agency of heat or electricity, is capable of destroying life either by chemical action on the tissues of the living body, or by physiological action from absorption into the living system." Besides limiting the sale of poisons by retail to pharmaceutical chemists, he would require all vendors of drugs coming within that designation, whether they be apothecaries, medical men, veterinary surgeons, wholesale dealers, drysalters or the like, to keep a poison-book, in which the date, name and address of the purchaser, the name and quantity of the article sold, and the purposes for which it was said to be required, should, in all cases, be stated. Further, he would greatly restrict the sale of poisons. In his opinion—and this view is shared by the joint authors of *Trials for Murder by Poisoning* and many other persons of practical experience—it is undesirable that the sale of certain highly-poisonous articles, such as the various vermin-killers, phosphorus paste, sheep washings, agricultural solutions, carbolic acid, &c., should be permitted without the slightest restrictions, often in unlabelled bottles, by grocers, oilmen, and the like. He would also prohibit herbalists from dealing in such articles as savin, pennyroyal and other herbs, the very purchase of which is, in most cases, with a felonious object.

Both Mr. Stewart and Dr. Tidy are performing a public service in demanding legislation in the matter of the storage of poisons, for, owing to the laxity of the law, hundredweights of arsenic may be obtained through the ordinary channels of trade, where ounces cannot be purchased, and these large stocks are often carelessly left open to servants, workmen, and even children. "The result is," as Mr. Stewart observes, "that the

* In connection with this question of the analysis of drugs, the observations at page 112 of the Annual Report of the Local Government Board for 1882-1883 are significant, as expressing a well-founded regret that drugs are too rarely analysed, "though the difference between a genuine and an adulterated medicine may be a question of life or death to the patient."

supposed restrictions on obtaining poisons are almost illusory; these substances are sown broadcast among ignorant people, and are placed in cupboards, unlabelled, amongst articles of food."

The Pharmacy Act of 1868 entrusted to the Pharmaceutical Society the duty of drawing up regulations for the keeping of poisons, and in pursuance thereof the Council of that Society agreed to certain resolutions, loyally carrying out the provisions of that statute. Owing, however, to an unwarrantable apprehension on the part of members of the Society that their trade would be injured thereby, the Council's recommendations were never ratified, and they have in consequence remained to this day a dead letter. So excellent were these suggestions that Dr. Tidy would desire to see them incorporated, with but slight alteration, in any future legislative enactment dealing with this subject.

Years have been permitted to elapse since the agitation for remedial legislation was set on foot, and yet nothing has been done to improve a state of things whereby, according to the *Lancet*, "hundreds of lives are yearly sacrificed and thousands of constitutions yearly undermined." Attempts, it is true, have been made to modify the law in some of the respects indicated. Mr. Warton introduced a Bill in 1884,* with the object of restricting the sale of Patent Medicines, but his laudable efforts on that occasion failed to find adequate support; and yet, his proposals aimed at getting rid of what may justly be designated a "crying abuse." For whilst the buyer is ignorant of the composition of these nostrums, the vendor frequently knows nothing of their physiological and therapeutic properties; and even if he did, the mischief would be almost as great, seeing that he has no control, and may be assumed to wish for none, over the indiscriminate dissemination of the articles in which he speculates. It is much to be feared that the levying of an impost on "specifics" gives them, in the eyes of the ignorant, the Government stamp of approval. Can such a tax be morally justified by the State? Lord Carlingford, on behalf of a former Administration, has also tried his hand at amending the Poisons Act by transferring the powers now vested in the Pharmaceutical Society to the Privy Council, and by making certain additions to the Schedules of Poisons; but out of a

* March 26, Second Reading.

too tender regard for vested interests and Imperial finances his project left the regulation of the sale of patent medicines untouched. We are strongly inclined to believe, however, that nothing short of a fundamental and thorough revision of the Law will satisfy either the Medical profession or that portion of the Public who are alive to the dangers to which they are at present exposed. With a consensus of authoritative opinion such as has been indicated, and with such ample materials at hand for an amelioration of the Law, legislation of a comprehensive character ought no longer to be delayed.

What is wanted is a measure which, whilst placing every possible difficulty in the way of poisons being obtained for unlawful objects, shall at the same time impose such stringent conditions upon the traffic in them that, in the event of their employment with criminal intent, every facility may be afforded for bringing the offenders to justice.

Addison on Contracts. Eighth Edition. By HORACE SMITH, Esq., Barrister-at-Law. Stevens and Sons. 1883.

This book is too unwieldy. By rough measurement the mighty volume contains 220 cubic inches of paper. Yet, if we may venture on a paradox, it is at once too large and too small. It is too large for the lawyer in town; a work on Contracts, to be valuable to him, should deal with the General Principles of the Law only, and should leave the specific application of it to other text-books. On the other hand, for the general country practitioner, it is too small and incomplete; the special Contracts are in some instances not worked out in sufficient detail, and there are many points which might be further elaborated with advantage. The Ninth Edition might appear as a series of volumes, each dealing with one or more special subject. The country practitioner would then have half a library condensed, and if the same plan were followed out with the corresponding work on Torts, a small outlay would furnish him with enough law to carry him safely through nine-tenths of his cases.

The Law of Money Securities. By C. CAVANAGH, B.A., LL.B. (Lond.), Barrister-at-Law. Second Edition. William Clowes and Sons (Limited). 1885.

Law books are of many kinds. They may roughly, however,

be divided into three classes, each of which has its special *raison d'être*. The first is the bare digest, the author's object being to refer the reader to other books. The second is the treatise, the object of the author being to save this reference to other books as much as possible. These two classes are for lawyers. The third appeals to a wider field, which includes both professional and lay readers. A more colloquial style is adopted, the precision and differentiation which the lawyer requires are laid on one side as unsuited to the untrained lay mind, and the author endeavours to produce a book which all who run may read. In this last class the result often fails to be attractive to the trained mind of the lawyer. But Mr. Cavanagh has proved that success may be attained even in this third class; and we are glad to be able once more to recommend his book as a useful guide for the Profession, and as an accurate and interesting statement of the Law for commercial men, whose every day duty it is to deal with securities. From our point of view, however, we think that some questions deserved a fuller treatment, and notably the law concerning Stock Exchange matters. The important decision in *Thacker* v. *Hardy* (4 Q.B.D. 685) seems to us to invite discussion, notwithstanding the fact that it is a decision of the Court of Appeal. There is no doubt that the evidence taken before the Royal Commission, which was not published until after that decision had been given, throws a flood of light upon certain points of practice obtaining in "the House," which, when they were discussed in Court, were enveloped in a profound darkness. We suppose, however, that Mr. Cavanagh did not think it wise to throw any doubt on decisions of the Courts in a book which was meant to guide merchants through the legal difficulties which beset their daily walk in life. We cannot help thinking that Mr. Cavanagh has carried simplicity of style a little too far, and we fail to grasp what was in his mind when he wrote this sentence (p. 542). "The doctrine of merger is so important, as connected with our present subject, that we may be excused if we limit our observations to explaining its operation in the extinction of particular securities." We should have thought that in a book which professed completeness, the importance of a doctrine was no excuse for limited observations upon it, but rather for full discussion, such as we may hope to have from Mr. Cavanagh's pen in his next edition.

The Statutes, Rules of Court, and General Orders relating to the Practice and Jurisdiction of the Chancery Division of the High Court of Justice, and the Court of Appeal, with copious notes, being the sixth edition of Morgan's *Chancery Acts and Orders*. Revised and enlarged by the Right Hon. G. O. MORGAN, Q.C., M.P., and E. A. WURTZBURG, of Lincoln's Inn, Barrister-at-law. Stevens and Sons. 1885.

The necessity for decent interment of the Fifth Edition of this well-known work was a sufficient reason for the appearance of the present volume. Her Majesty's Under Secretary of State for the Colonies, the learned Mr. Morgan of this book, lately assured his constituents that he had sacrificed not a little by giving up a Professional for a Political career. The Chancery bar have been involuntarily concerned in the sacrifice. Valuable as an essay on the method of his day might be from Mr. Morgan's pen, he has lost, we think, with the following out of a new career, his special qualifications as an authority on Chancery practice, nor is this loss replaced by the diligent labour of his co-adjutor in the editing of the present volume. We miss in this Edition the authoritative treatment of principle and detail which characterised its predecessors, and which can only come from an experienced hand. in constant touch with a Court which has daily to make new applications of old and new principles. Subject to this deduction, the book is of its former merit for convenience and reference. The Weekly Notes are continually cited, and we trust that they will be cited in books of practice until the too slowly awakening Incorporated Council of Law Reporting has determined either to abolish their publication, or to make them such as to command the ear of the Judges.

The fusion of Law and Equity has hardly found its way yet into the text-books of Practice, which are written, as before, for Lincoln's Inn or the Temple respectively, and we think that the editors in this case have shown much judgment in what they have accordingly omitted, as well as in what they have retained, from the mass of modern Practice rules. A moderate use of the book in practice has disclosed a comparatively small percentage of cases overlooked. We may instance under the heading of Maintenance, *In re Breed's Will*, L.R. 1 Ch. D. 226; and s. 5 of the Conveyancing and Law of Property Act, 1882, should have been noted on p. 81, in connection with *In re Cotterill*, as there cited.

The struggle for survival amongst once standard text-books is severe: one well-known work has even recently appeared with all its light, glow-worm like, in the tail of its unwieldly Appendix. The absolute necessity for such a work as the original "Morgan" was undeniable, so widely scattered were the sources from which it was compiled. It has, meanwhile, at least twice been admittedly re-written; and now, as a reprint of statutes, rules, and orders, with a mass of authorities conveniently assorted, it will, if we mistake not, whilst lacking the quasi-authority of its original, maintain in this, its sixth generation, the reputation of that original for accuracy and general usefulness.

Leading Cases on the Law of Torts. With Notes. Edited by W. E. BALL, LL.D. (Lond.), Barrister-at-Law. Stevens and Sons. 1884.

This book is in fact an English Edition of a very valuable American work, Mr. Melville Bigelow's *Leading Cases on the Law of Torts*; and we should have been better pleased if the English Editor had made this plain, instead of merely stating that he had largely availed himself of Mr. Bigelow's American work on the same subject. It would have been fairer to the learned American Jurist, and fairer, too, to Mr. Ball himself. The work of editing has been practically limited to substituting English Leading Cases on certain points as to which Mr. Bigelow had used American cases, and to cutting out bodily the valuable historical remarks, and the discussion in the Notes on American decisions. Beyond this, we do not see sufficient original work to merit the title of "Ball's Leading Cases." One or two points have been re-arranged with advantage, and in most cases the notes have been brought up to date. But we fail to understand why any book professing to be complete should omit to deal with the question of Statutory Torts, as difficult a point as is to be found in the whole Law of Torts, more especially since the decision (which is probably erroneous) in *Atkinson* v. *Gateshead Water Co.* (2 Ex. D. 441). It is certainly not encouraging to come across the following sentence in the preface, "Statutory Torts, Marine Torts, Easements, and other branches of the subject, have been left untouched." On these and other branches of the Law, the decisions are frequently conflicting, and if Mr. Ball had had

courage enough to attack the difficulties which pervade every branch of the Law, he might have produced a work of which the profession stood greatly in need. To this extent, therefore, he has, we think, missed his opportunity. We regret to observe that the revision of the proofs appears to have been hurried, the references to the cases being frequently wanting in accuracy, and even sometimes misleading. We trust that if a second edition is called for, more care will be given to every part of the book, and more especially that such statements as that given on p. 320, that *Firth* v. *Bowling Iron Co.* and *Crowhurst* v. *Amersham* practically overrule *Wilson* v. *Newberry*, will entirely disappear.

The Settled Land Act, 1884, explained, with a Summary of the cases decided on the Act of 1882, the Extension of the Act by the Agricultural Holdings Act, 1883, Forms of Notice, and Precedents. By J. THEODORE DODD, Barrister-at-Law, of Lincoln's Inn. Horace Cox. 1884.

No small amount of scattered law and judicial theory on the subject of settled land has been collected and reproduced in this slim volume. The changes introduced by the Settled Land Act, 1882, were not, in Mr. Dodd's opinion, as we had occasion to point out in a former number of this *Review*, sufficiently wide, and Mr. Dodd is still unsatisfied. His hunger for such a measure as that which is sketched out by way of "improvement and extension" of the existing Settled Land Acts could only be satisfied by ignoring all historic tenure of land, and has, we think, begotten an impatience with his subject which is fatal to his claims as a text-writer. So long as the "agricultural labourer" belongs to a diminishing class, and the tenant for life is a trustee for all parties, we fear that a power for "the tenant for life to dedicate a small portion "of the property for poor allotments, and to sell it at *something* "*less than the best price*, or to let it at *something less than the rack* "*rent, if he chooses to do so*," could only form part of a measure with a very different title, with no principle to guide Her Majesty's Judges in its interpretation. The author's earlier fears that glebe land lay altogether outside the Act have already been dispelled by decision, and he may find further consolation in the recent attempt, made with all gravity, to bring a baronetcy within its

Sections, as an incorporeal hereditament, and saleable accordingly, with a new interest to conveyancers. So far as we have been able to ascertain, the author's belief that he has included all cases on the Settled Land Act, 1882, reported or noted up to the date of his work, is well founded; in this respect the book has a real value of its own.

The Laws of Insurance: Fire, Life, Accident and Guarantee. By JAMES BIGGS PORTER, Barrister-at-Law. Stevens and Haynes. 1884.

Principles of the Law of Insurance adopted in the Civil Code of California. By WILLIAM BARBER. Sumner Whitney and Co., San Francisco, Cal. 1882.

Mr. Porter treats of the laws of Insurance as applied to risks and losses caused by fire and accident, and to compensation payable on the termination of a life that has been insured. He also discusses the principles applicable to fidelity-guarantees, in other words, the risks of suretyship. He has not, however, treated of the law of Marine Insurance, though it is difficult to imagine why that branch was omitted. Of course it would have increased the size of the very handy volume which is the outcome of Mr. Porter's labours, but we notice that he illustrates many of his propositions and principles by instances of Marine Insurance. This fact might well be looked for, since the bulk of the cases litigated in the Courts are, owing to our maritime commercial supremacy, concerned with the sea risks attending ships and their cargoes. The various branches of Insurance are not treated separately, as though involving separate principles of their own; but the common underlying principles are discussed in a series of well-arranged chapters. Thus, in the important chapter dealing with "conditions in policies," the conditions in both Fire and Life policies are set forth and dealt with. Mr. Porter is the first English writer who has thus treated of these subjects. The law relating to Fire Insurance is of a more intricate and complex nature than that relating to Life; consequently, we find many more chapters devoted exclusively to Fire Insurance law. There is a fundamental difference between a contract of insurance on property and on life as between the assured and insurer: the former is one of indemnity only; the latter is in the nature of a wager to pay a certain sum

down on the happening of a given event, if the terms of the contract have been observed by the assured. This difference might, we think, have been a little more elaborated. Our author cites a considerable number of cases, no less than 1,400; and we observe that no small proportion of these are American, and deal with Fire Insurance. This may be due to the dryness of the American climate, and to many of the houses being built of wood, and somewhat also, it is believed, to the litigiousness of the American offices.

The decisions of the Scotch, Irish, Canadian and Australian Courts are also laid under contribution. A certain amount of caution must, we think, be exercised in accepting some of the American decisions as good law; some seem to be, on the face of them, clearly wrong. Mr. Porter does not write for the student; his style is very severe, and he takes for granted that his readers are more or less acquainted with the principles of his subject-matter. But his book ought to be a very valuable guide to those who consult it for practical assistance. Its arrangement is good; principles are lucidly set forth and points are discussed with clearness and without fear or shrinking. There are one or two blemishes that may easily be obviated in another edition, such as the extreme baldness of the style, the separating of paragraphs by wide spacings, giving an impression that they are disconnected, or not more connected with each other than they would be in a mere digest; and there are clerical errors both in the text and notes (probably printer's mistakes). Nevertheless, we may congratulate Mr. Porter on having made a valuable addition to the literature of his profession.

In one small volume of the very remarkable "Pony" Series, as it is called by our American brethren, Mr. Barber has succeeded in collecting and putting together a large mass of Insurance Law. His work, which he styles "a concise view of the principal heads" of the Law of Insurance, consists of the annotation and illustration by a vast number of cases of the sections in the Civil Code of California dealing with Insurance. This Californian code is substantially a reproduction of Mr. Dudley Field's famous Draft Code for the State of New York, and it is one of that eminent Jurist's best rewards for his labours. We may notice that in this, as in other American law books, great respect is paid to English decisions, and we find on page after page the bulk of the cases cited are those of

the English Courts. The book is divided into four chapters, each chapter being subdivided into articles, in which Insurance in general, Marine Insurance, Fire Insurance, and Life and Health Insurance, are respectively discussed and commented on. Mr. Barber has evinced great care and industry in the preparation of this work; most of the topics connected with Insurance Law that arise for discussion in the Courts are fully and adequately treated.

The Duty and Liability of Employers as well to the Public as to Servants and Workmen. By WALWORTH HOWLAND ROBERTS and GEORGE WALLACE, M.A., Barristers-at-Law. Third Edition. Reeves and Turner. 1885.

The learned authors of this work describe it as the third edition of their original treatise on the Duty and Liability of Employers; but in reality it is a new publication, and we congratulate them on its production. They have enlarged the scope of their former work from being very little else than a monograph on the Employers' Liability Act, 1880, to a comprehensive treatise on the relations of Master and Servant to each other and the public at large. The first chapter deals with the general duty of employers, and in it the authors furnish the sweeping test of employers' liability of a duty on their part not to inflict injury upon others; thus they expand the more limited liability expressed by the maxim, *respondeat superior*, by adding the wider scope of that expressed by the maxim, *sic utere tuo ut alienum non laedas.* In a word, the rest of the book is a corollary to the first chapter. Of course a large space is devoted to the consideration of the Employers' Liability Act, 1880 (one of the most important Acts of recent years); chapters IX., X., XI. and part of XII. dealing with its provisions. In their discussions on that Act, the authors lay down as a correct principle of law that the statute does not impose any new duty on the employer, and that the duty of the latter to his workmen must, as formerly, be regulated by their contract of service. In support of this view they cite the well-known case of *Griffiths* v. *Earl of Dudley* (9 Q.B.D. 357). In the comments on that case it is pointed out that the contract upheld by the Superior Court may really have been a void one, as offending against the Truck Act, though the decision established a correct

principle. There is a sensible chapter on the doctrine of common employment; and the fallacy of its supposed harsh operation in certain instances is exposed; its true nature, namely that of a defence open to the master or employer, is clearly set forth. In this, as in the earlier editions, the learned authors have shewn themselves possessed of a grasp and breadth of principle often sadly lacking in our text-book writers. Their criticisms are bold, and never wanting in ingenuity; indeed at times their ingenuity and aptitude for criticism might tempt them to plausible but faulty c[illegible]alian were they not restrained by accurate knowledge of the law. A book that has passed through two editions so rapidly speaks for itself. The authors have gained a success fairly earned by conscientious industry, and correct exposition of the Law.

THE

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THE PROCESS OF LEGISLATION.

THE Sociologist of the future when studying our present method of making law, might well be excused if he came to the conclusion that "the Law was made for lawyers and not lawyers for the Law," and the number of lawyers recently recorded as battling for admission into the Legislative Chamber might aptly serve to support this conclusion. Are we willing to suffer ourselves to be so misunderstood? When one Premier unceasingly urges the necessity of some stringent reform in Parliamentary procedure, and when another considered it necessary to exact pledges from Parliamentary opponents that they would let the ordinary business of the Nation be carried on, it may be as well to take counsel with ourselves whether some easier, surer, and more wholesome procedure is not available, more especially with regard to actual legislation: as to which, it need hardly be observed, the Public are far more directly concerned than the Legal Profession.

It was supposed three years ago that some efforts were being made in this direction, of which those affecting the compulsory closure of debate by a bare majority, and the institution of Grand Committees for the consideration of non-contentious measures, attracted most attention. Owing, however, to certain characteristics of Party Government, to an outsider as perplexing as they are surprising, these efforts were very inadequately appreciated. The unequal discussion which different subjects receive quite apart from

their intrinsic importance; the bitterness with which minor, and to the public unexpected, points are debated; and the extraordinary rapidity with which burning questions become "matters of ancient history;"—all these Parliamentary characteristics serve but to obscure the intent and to efface the result of our tentative reforms of Procedure. Upon the subject of the *Clôture*, the puzzled citizen found himself appealed to "by all his Gods," on the one side [illegible] Parliamentary debate from extinction, and on [illegible] to save Minorities from the tyranny of Majorities!! Aghast at the appalling catastrophes which apparently threatened his Legislative Assembly, he rose to the emergency, and, having slowly convinced himself that Parliament was intended to do some work—that the debates were very dull reading—and that probably everything could be always put right by recurring General Elections, he plumped for the *Clôture* by a bare majority, and, conscious of a great political effort, calmly awaited the result. But, to his surprise, no visible change of procedure took place, the steam of fiery indignation vanished into thin air; the political opponents set to work to worry some new bone of contention, almost oblivious of the very meaning of their former war-cries, and the whole process of making up the Parliamentary mind has to be repeated with probably like result.

On the other hand, the proposal for Grand Committees—or rather Standing Committees—for Trade and Law, seemingly a far more novel experiment than the *Clôture*, and one requiring much care in elucidation, was accepted with little public comment, notwithstanding Mr. Gladstone's assertion that he looked to such methods of "devolution and derogation" as more likely to give permanent relief to Parliament than the semi-penal restrictions which the *Clôture* resolutions were intended to enforce. Nor would a student of Constitutional History feel inclined to doubt Mr. Gladstone's estimate of the relative importance of

these two proposals. For the one dealing with Grand Committees implied the institution of a department of Parliamentary machinery, which, though not novel in form, had for its object a change, not merely in the procedure, but in the actual business of Parliament. Such a proposal was a recognition of the fact that legislation was an increasing want, and that the Representative Assembly, *as a whole*, was not the best instrument for supplying such wa[illegible]. Nor could the diminished attendance of members, [illegible]ing interest of the public tend to disturb such a ju[illegible]ent, since it is just by such unnoticed, and indeed often almost imperceptible shifting of aims, that the adaptability of the British Constitution is secured; while the outcry over such supposed innovations as the *Clôture* merely implies the sudden enlightenment of the public that a gradual change is already a *fait accompli.* It is the sign of the end of certain Constitutional changes, not of their beginning. The *Clôture* was nothing else than the proclamation in black and white of that principle of national Government by temporary majorities, which has been working its way into Constitutional practice since the days of George III. In some more direct shape the system of the *Clôture* will probably commend itself to a future and a more business-like Parliament. Meanwhile, even the sense of this power in the background has perhaps not been without its use. We may note that "Counts-out" are practically clumsy applications of the *Clôture* to debates, enforced by the absence—in lieu of the presence—of a sufficient number of members, and with the absurd disadvantange of closing all further business, instead of enabling Parliament to pass on to more pressing matters. So far as any coherent opposition to the institution of Grand Committees is concerned, it is practically summed up in the statement in Mr. Sydney Buxton's *Political Manual* to the effect, "that practically all the necessary work is accomplished *somehow*

or other, and it would be a great evil if greater encouragement and facilities were given to the introduction and adoption of innumerable fancy reforms: *legislation is quite enough as it is.*" On the other hand, the supporters of the proposed Committees—the "devolutionists," as they may be termed—being impressed, rightly or wrongly, by a sense of the need of much social and constructive Legislation, open up vistas of vast possibilities in that direction. Mr. Whitbread long ago hinted at the future development of Committees on other than non-contentious subjects, such as Finance and Foreign Policy, after the similitude of the French Parliamentary Bureaux; while Sir George Campbell's desire for a Grand Scotch Committee for Scotch business suggests a possible solution for federal Home Rule. Nor must we forget an abruptly reported utterance of Mr. Newdegate that "the grandest old Committee of all was the House of Lords;" an oracular utterance impelled, as it were, by some fateful deity from the mouth of such a *sacer vates* of the Constitution, it being synonymous with the Radical proposition originated by Mill, who made it, not from any desire to preserve the Upper House, but in order to make that House useful.

It will be seen that, behind this discussion lies the question how far Legislation is needed or useful. That, however, is not a question within the scope of the present article. All that we have here to deal with is, assuming that law-making be desired, to adopt the principle enunciated by Mr. Justice Stephen that "Legislation proper is under favourable conditions the best way of making the law." What are these favourable conditions? Do Grand Committees supply them? Let us consider for a moment how these Committees, so far as they have been constituted, have hitherto worked. The Grand Committee on Trade was undoubtedly successful, for it is almost impossible to suppose that such a Bill as the Bankruptcy

Bill could ever have made its way through a Committee of the whole House without endangering not only its own prospects but also those of other equally important Bills. The Patents Bill, again, was precisely one of those "Innocents" which, useful as many of them are, fall subject to the "massacre" towards the end of a session simply because no one feels sufficient enthusiasm on their behalf. The character, too, of the members of that Committee was practical and business-like, though it may be questioned whether their number was not too large to ensure its proving manageable on a more debateable subject. It must be recollected, however, that a large number is necessary to ensure a working *quorum* and to give opportunities of release to members so long as they are as hard-worked as at present.

The Grand Committee on Law was the exact opposite of the Trade Committee, though formed on the same principle. It exhibited all the points of danger in the present constitution of such bodies. Prolixity, obstructiveness, and heat in debate were all reproduced, as in the wider Parliamentary atmosphere. In fact, as was commonly asserted at the time, the Committee on Law was a mere House of Commons in miniature. Yet that is precisely what Legislative Committees should not be. This is the key to the weakness in the system of these Committees as hitherto proposed. It is assumed that they must necessarily be chosen in proportion to the respective parties in the House, and that the members, though selected from the several groups as more or less specialists in regard to the measures in hand, should nevertheless be so combined as to form a characteristic miniature of the whole House. But the very reason for delegating such legislative duties to a Special Committee is that the whole House finds itself unadapted to fulfil these duties. The body, which is representative of all parties in the country, is, by its nature, the least fitted to

draft legislative proposals, however well fitted it may be to sanction them, and it is of no advantage therefore to concentrate its characteristics in the smaller field of a Committee. "It would be as impossible," says Mr. Justice Stephen, "to get in Parliament a satisfactory discussion of a Bill codifying the Law of Evidence as to get a Committee of the whole House to paint a picture." Nor is this to be wondered at. Knowledge of details and insight into legislative action should be the *criteria* upon which members of Legislative Committees should be chosen, and not for the mere representation of parties or interests, since it is no longer a question upon what principles the Nation is to be governed, but *how* the particular principle sanctioned by the Nation's representatives is to be carried into practice. The criticisms of Mr. Parnell, the legal experience of Mr. Gorst, or the sarcasms of Lord Randolph Churchill were, perhaps, all of them natural elements of a Committee to codify the Criminal Law; but the leadership of an anti-English party does not call for any recognition from such a Committee. On the contrary, most of the elements of Parliamentary power are absolutely antagonistic to the life of such Specialist Committees. Party spirit, party subordination, both necessary elements of modern Parliamentary Government, are merely hindrances to the settlement of legislative details, the principles of which should once and for all have been fought over and sanctioned. The eloquence, which is the life-blood of a Parliamentary assembly, only serves to swamp a Committee. Even such an orator as Mr. Bright seemed out of his element. The whole burden of responsibility is shifted, since members on Committee are properly no longer answerable to their late electors, but on the contrary to the whole Nation in the future for the efficient working of the measure under discussion. "Obstruction," again, which, whether justifiable or not, implies the persistent attempt of a minority

to defeat or evade the decisions of a majority, is, so long as Grand Committees bear the stamp of their origin in character and proportion, not eliminated, but only modified by the physical surroundings of a Committee-room. Moreover, so long as the principles of a measure are not clearly stated and decided upon by the House of Commons, but are left lurking in different clauses, the fight over the principles must inevitably be renewed over the several clauses.

From these considerations it will be seen that the flaw in the legislative capacity of Grand Committees is really the flaw which runs through the same capacity of the House of Commons. It would seem that the lesson which Mr. Bagehot endeavoured to instil into the minds of reformers has still to be learnt, viz., that "the legislative function is only one, and that not the most important, of the functions of the House of Commons." These functions he enumerates as the elective (*i.e.*, in regard to the Executive Government), the expressive, the teaching, the informing, and finally the legislative, which, though not the least important, he declares to be certainly the least effectively discharged. The limited legislative capacity of a Representative Assembly is well probed by Mill when he says: "There is hardly any kind of intellectual work which so much needs to be done, not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the making of laws. This is a sufficient reason, were there no other, why they can never be well made but by a Committee of very few persons." Knowledge as to what the existing laws are, experience as to how they may affect different classes, in what directions the need for alteration is felt, and the manifold results likely to arise from such changes,—intellect, forethought, prudence, and clearness of view, all these are legislative qualifications; and scope and freedom for the exercise of such qualities

should be the essential qualification of the legislative body. But the very *raison d'être* of a nationally Representative Assembly is that its members "are not a selection of the greatest political minds in the country, from whose opinions little could with certainty be inferred concerning those of the nation, but are, when properly constituted, a fair sample of every grade of intellect among the people which is at all entitled to a voice in public affairs." The representatives in Parliament are both the witnesses as to what legislation is wanted, and the national jury to decide on what principles these wants are to be supplied. But it requires a differently tempered body to incorporate and apply these principles in practice.

Granted, moreover, that legislative proposals must be left to individual members, still the sense of responsibility, and with it the increase of care and judgment, would be greatly enhanced were such member, having obtained Parliamentary sanction for the introduction of a Bill, compelled to prove its practical value before a Committee of legislative experts, and to pilot it through their criticisms, instead of launching ill-considered propositions in the chopping sea of a Committee of the whole House. Even if the Bill be ably and carefully drafted, *for that very reason* it cannot but suffer damage when exposed to the gusts of loud-voiced "interests," or the sudden squalls of political *contretemps*; until its authors, especially if they be Ministers, are driven by expediency, or by want of time and leisure, to accept compromises utterly alien to their reason or their desires. "Clauses omitted which are essential to the working of the rest; incongruous ones inserted to conciliate some private interest or some crotchety member who threatens to delay the Bill; articles foisted in on the motion of some sciolist with a mere smattering of the subject, leading to consequences which the member who introduced, or those who supported the Bill

did not at the moment foresee:"—Such is the description applicable to too much of modern constructive legislation; a severe comment on which is afforded by an instruction given in May's *Parliamentary Practice* that "amendments must be coherent and consistent with the whole Bill." "Laws, therefore, human," says Hooker, "are available by consent." It would be more true now to say that they are only available by the grace of an Opposition. And what a price do the Public pay for this system of legislation! Protracted suits, puzzled Judges, with consequent Appeals, Costs piled upon Costs, and suitors punished and impoverished; and all because of the latitude allowed to ignorant, or mistaken, or self-confident irresponsible legislators, who can only hope to retrieve their failings by passing Amendment Acts, making confusion worse confounded, until the last refuge of despair is to mass all these together in one heterogeneous Consolidation Act, winding up with some such a clause as "that the rules of the Common Law, including the Law Merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply." And this is apparently the nearest approach to Codification which lawyers in Parliament and law-making Judges can be induced to make. Finally, even if a Consolidating Bill of a more or less contentious character be properly prepared and attempts to deal with the whole of any subject, (for it is impossible to legislate properly on any part of a subject without having the whole present to one's mind), it drags over from session to session through the sheer impossibility of finding time to dispose of it.

But, objectors ask, is Parliament to be turned into a mere legislative machine? and is the whole body to be split up into an elaborate mechanism of wheels and cogs in order to turn out specimen Acts? We are told by Mill, as many would remind us, that "The proper office of a repre-

sentative Assembly is to watch and control the Government: to throw the light of publicity on its acts: and in addition to this to be at once the Nation's Committee of Grievances and its Congress of Opinions; an arena in which not only the general opinion of the nation, but that of every section of it, can produce itself in full light and challenge discussion. . . . Representative Assemblies are often taunted by their enemies with being places of mere talk and bavardage. There has seldom been more misplaced derision. I know not how a Representative Assembly can more usefully employ itself than in talk, when the subject of talk is the great public interests of the country." Quite so! And it will be generally agreed that many questions can be more fully and ably argued out in Parliament than is possible on the platform or in the press. But let the lovers of talk read on to the end. "Such 'talking' would never be looked on with disparagement if it were not allowed to stop 'doing;' which it never would, if Assemblies knew and acknowledged that 'talking' and discussion are their proper business, while 'doing,' as the result of discussion, is the task not of a miscellaneous body, but of individuals specially trained to it."

The real question before us is how is this "doing" to be satisfactorily accomplished?

Mill, with his usual relentlessly logical pursuit of means to attain any rationally desired end, outstrips the notion of Grand Committees by taking away altogether from the House of Commons the power of drafting laws. His scheme summarised is that of a Legislative Commission, consisting of a small body, similar in size to the Cabinet, and similarly variable in exact numbers. Its members would be appointed by the Crown for a definite time, and their special duty would be to draft laws in accordance with Parliamentary instructions. The Commission itself would be a permanent body, and its permanent work would

be the revision and codification of the whole body of Laws. It would have no power to finally sanction either the Laws or their codification, nor would it have power to refuse its instrumentality for any legislation for which the country through Parliament might express its desire. Parliamentary instructions to draw a Bill would be imperative. Such a Commission, says Mill, "would only embody the element of Intelligence in the construction of laws; Parliament would represent that of Will." He further points out that though Committees of the Whole House would cease formally to exist, that would result from disuse: the right to hold them need not be abandoned, but might be stored up in the Constitutional armoury, like the Royal Veto, or the right to refuse Supplies: or, to take another instance, "the same good sense and taste which leaves the judicial functions of the House of Lords to the Law Lords, would leave the business of legislation to the professional legislators."

Such a marked division of labour would, however, probably be too rational a system for the constitutionally sceptical British citizen, as the doubt and timidity displayed over the devolution of even non-contentious specialist legislation has exemplified. And, under the circumstances, the House of Commons is perhaps sufficiently capable of supplying Committees for all "public" legislation, provided only that the principles on which they are to act be clearly and firmly grasped; namely, that such Committees should be based, not on representation, but on special knowledge, that they should consist of limited numbers, and that their purpose should be to draft intelligible details for legislation in accordance with the principles sanctioned by Parliament, and not to fight over or modify the principles themselves, which could always be referred back to Parliament for further and clearer instructions. Such instructions might be given, as they occasionally are at present, in the shape

of Resolutions of the House. Whether these Committees should be, after the manner of the French Bureaux, entirely distinct from the promoters of the particular measures, so that the Minister or promoter in charge of the Bill, and the proposers of amendments, would have to appear before the Committee like witnesses before the present Select Committees; or whether such Minister, or promoter, should himself be on the Committee, possibly as Chairman, is a minor consideration. It would seem, as regards Ministerial measures, that the presence of the Minister in charge of the Bill would be more advantageous, since he would be more likely to elucidate its scope and intention, while his sense of responsibility and of the necessity for a carefully considered measure would be beneficially increased. There is, however, no necessity for reformers to turn aside to follow purely rational philosophers, or to imitate Foreign procedure, for they can find in our own history of Parliamentary practice sufficient clues to guide them out of the maze of Babbledom.

Grand Committees are not the offspring, as many seem to suppose, of the evolutionary brain of Mr. Gladstone. Up to 1832 Grand Committees for Grievances, Trade, and Religion were annually appointed, being in form similar to Committees of the Whole House, but sitting at a different time from the ordinary sittings. They had, indeed, practically long fallen into disuse, but "they served," as May says, "to shew the ample jurisdiction of Parliament." Other Standing Committees, however, are still a component part of Parliamentary machinery, such as the Committees of Public Accounts, of Selection, on Standing Orders, and on Railway and Canal Bills. While, therefore, the old Grand Committees suggest the wider scope of the measures which may usefully be brought before such bodies, these later Standing Committees suggest the element of permanency, which might advantageously be introduced into

the constitution of modern Grand Committees. A more continuous weight and authority would be given them were they to be nominated for the term of each Parliament, while such permanency would enable their members to keep their minds fixed on special subjects of legislation, and would encourage them to take a more continuous interest in such subjects. A process of annual re-nomination of the members of the Committees would leave to Parliament sufficient opportunity for objecting to any individual re-nomination, or in order to introduce fresh blood. It may be as well to recall the fact that the practice of committing Bills to Select Committees was once the rule, important Bills being alone excepted; whereas now the rule is reversed, so that, owing to the jealousy of Ministerial autocracy, and the increased energy of private members natural to Democratic development, it is deemed a patriotic duty to scrutinise every clause, line, and word of a Government Bill. In addition to these difficulties, an enormous increase of Administrative legislation has become necessary, owing to the extent of interests brought under Parliamentary view, and the increase of the scope of Parliamentary interference. Moreover, this legislation, being now more of a re-constructive than a destructive tendency, is necessarily more complex and difficult: very much as the rebuilding of our houses, under the pressure of the present conditions of our civilisation, involving intricate drainage, gas and water supply, not to speak of electric wires overhead and telephonic wires underground, involves a greater disturbance of interests and requires considerably more ingenuity than when a party-wall was our only point of contact with society, and every man had his own cess-pool. It is becoming evident that, owing to the increase of Parliamentary business, no large or important measure of Legislation can be undertaken without Government support. But the Government is the very body most over-burdened. The result is that, with

time and means lessened and burdens increased, the legislative functions of Parliament are becoming rapidly congested. Sir Erskine May, in the latest edition of his *Parliamentary Practice* gives a succinct account of the origin of the present ill-adapted process of drafting Bills in Committee. "For several years it had become apparent that new conditions of political life had rendered the consideration of every Bill in Committee of the whole House a serious obstacle to the legislative and deliberative efficiency of the House of Commons. Such a Committee affords no relief to the House itself, it is not indeed a Committee in the proper sense, *it is not a selected body to whom certain functions are delegated*, but is the entire House of 650 members who are at liberty to move amendments (*sic*) to every line of a Bill, and to speak any number of times to each amendment. Meanwhile, all other important business of legislation is suspended. Nevertheless, so long as a comparatively small number took part in discussing the details of a Bill, a Committee so constituted was an effective body. But of late discussions in a Committee of the Whole House have attained a more intractable character, and the consideration of two or three important Bills may occupy the greater part of a Session." From recent experience it might be said that one such Bill is sufficient to put a stop to every other Parliamentary, or at any rate Ministerial, measure. As a result, not only the legislative function of Parliament, but to a greater or less degree all its other functions enumerated by Mr. Bagehot are thrown out of gear; nor should the loss to the Nation arising from the strain and burden placed upon its Ministers by these prolonged and worrying debates be forgotten. It is true that debates often clear the air by discussing subjects and proposals upon which the Nation has not made up its mind, but opportunities for such discussion would more easily be found, and be in themselves more useful, were Parliament relieved from the

pressure of measures already ripe and urgently needing to be enacted.

From these theoretical and practical considerations of Mill and of Sir E. May three marked qualifications for a Legislative Committee may be deduced; namely, limitation in the number of members, permanency of constitution, and absence of party representation: all of which qualifications are lacking in the present constitution of Grand Committees. One more requisite may be added, *viz.*, that the field of work of these Committees should be enlarged. Measures financial, agricultural, electoral, must all be of a complicated and specialist character, nor can it be hoped that they should not be of a party and contentious colour. If they are left to the House for consideration in detail, every clause and line will be subject to ill-regulated and unrestricted opposition, regardless of all previous decisions upon principles. The very atmosphere and circumstances of the House engender contentiousness. Yet it is precisely the details of such measures which require quiet and careful working out, if the country is to gain any benefit from them. For this end, two Constitutional maxims must be driven home to the minds of our legislators. First, that the will of the majority as to the object and the principles of legislation, when once properly pronounced, must be accepted as binding. Second, that the Body which is to draft the details of such legislation must not be based upon the principle of representation of political interests, but on that of special knowledge in its members.

These maxims once recognised, the remaining difficulty would be to distinguish between what are principles and what details: there being of course leading principles and also principles of details. Existing Parliamentary forms and traditions, however, again afford examples of how such a solution may be arrived at. During the continuance of the old Grand Committees on Trade and Religion, it was

customary to propose all legislation on such subjects in the form of Resolutions passed by the whole House, and such a custom has frequently prevailed during the present century. The Roman Catholic Relief Bills were so passed, and the Tithes Commutation Bill was treated in like manner. Bills regulating the sale of Beer and of Bread, the management of Public Houses, and other matters classed under the head of Trade, have all been required to be introduced by way of Resolution; while, to come to more modern times, Mr. Disraeli's Reform Bill is a precedent in this direction. More ancient processes afford somewhat similar examples, for under the Lancastrian Kings it was customary for the Commons to send up Petitions for certain legislation to the King, who appended his notes thereto, and at the end of the Session these amended Petitions were submitted to the Judges, who drafted legislation upon this basis. Resolutions, again, have been carried into legislative effect by orders subsequently issued by the Privy Council. Any difficulties over principles in detail might be set at rest by reference back to the House, as before suggested, for fresh instructions.

With these several traditional and customary illustrations of possible legislative machinery before us, is it not conceivable that a *via media* might easily be found, whereby the popular Will should be fully expressed in general terms by Resolutions passed by the whole House, while the drafting of Bills upon those Resolutions in the shape of clauses, subsections, and schedules, should be left entirely to the discretion of the Specialist Committees, of which there should be several, and these Parliamentary, not the extra-Parliamentary unique body advocated by Mill?* It is in

* There is no reason, however, why there should not be such an Official Commission of legal draftsmen for drawing the form of proposed Bills, for which a fee might be charged sufficient to deter too wanton promoters of measures. This Commission might be consulted by the Committees when

the attempt to insert words and differentiating sentences that Parliament spends such a portentous amount of time and with such a lamentable result, while in Resolutions, provided they speak plainly and point definitely to their object, the actual words are immaterial until drafted in the shape of clauses. Undoubtedly debates on second readings would be prolonged, and further debate become more necessary on third readings, recommitments of Bills being a necessary check over the Committees. Still, the time saved in Committee, and the improved drafting which would result, may be considered as counterbalancing any possible prolongation of these debates. Budget Resolutions afford examples of how easily financial proposals might be adequately sanctioned by the House, and be left to be drafted into the necessary legislative form by a special Finance Committee by whom the intricate methods of raising the required funds would be devised. There seems no reason why such an Act as the National Debt Act of Mr. Childers should not have been sanctioned in the shape of a single Resolution. The Franchise Act, again, would probably have been capable of being summarised in six Resolutions, and a Committee would then have been able to graft on to these a condensed codification of all the Acts necessary to its interpretation, which, under our present system, for the sake of lightening the passage of the Bill through the House, are merely referred to or scheduled. Moreover, differences of opinions and divisions in such Committees would not involve, as they may in Committees of the whole House, a party crisis or an unnecessary Ministerial resignation, if only these Committees were so constituted as not to be miniatures of the representative assembly and of party politics. The purport of the Corrupt

necessary. The Committees, again, might have full power to add to their number individual specialists not necessarily connected with Parliament or with Government Offices.

Practices Act might, it is believed, have been summarised in at most a dozen Resolutions, only the general draft of which, and not the exact wording, would have been the proper subject of contention. It would be quite possible also to indicate under particular Resolutions the schemes such legislation might involve, and the general means by which its aims might be carried out.

Such then, it is suggested, should be the form which Parliamentary legislative action should take in the future. With wider scope, more limited numbers, permanency of constitution, and absence of party representative characteristics, Grand Committees would become efficient instruments for framing practical and intelligible laws. Other reforms of Parliamentary procedure are doubtless needed, such as checking of irresponsible criticism and of flagrant obstruction, and the tendency of Parliament to intrude upon the functions of the Executive, and sometimes of the Judicial Bench; any amelioration in these respects would help equally to clear the road for the exercise of the Parliamentary legislative function. Actual devolution, too, of some of the present power of Parliament to Local Bodies must have a most salutary effect on its action. These further reforms can only here be indicated as desirable. Were they, however, to be carried out at the same time as some such measures for legislative relief as have here been suggested, the House of Commons might again become that which all admirers of Parliamentary Institutions must wish it to be, namely, the heart of the nation, fed by the National blood, satisfying National wants, and beating in unison with all the National hopes and aspirations.

SPENCER L. HOLLAND.

II.—COPYRIGHT LAW REFORM.

THE advocate of Copyright Law Reform requires no apology in calling public attention to its need. The subject of Copyright is of great social, commercial, and historical interest. The debt of Society to authors, musical composers, and painters for their contributions towards the instruction and entertainment of mankind is measureless. The fact of the vast and increasing sums invested in Copyright property clothes the subject with great commercial importance. In addition, there is the strong historical interest surrounding the growth of Literary property. No pages of English history are more interesting to read than those narrating the struggles of Literature against Tudor and early Stuart and Hanoverian intolerance, and its eventual growth into that tree of liberty of which the free press is one of the noblest branches.

From about the period of the introduction of printing into this country, that is to say, towards the end of the fifteenth century, English authors had, in accordance with the opinion of the best legal authorities, a right to the Copyright in their works, according to the Common Law of the Realm, or a right to their "copy," as it was anciently called, but there is no direct evidence of the right until 1558.

The Charter of the Stationers' Company, which to this day is charged with the Registration of Copyright, was granted by Philip and Mary in 1556. The avowed object of this corporation was to prevent the spread of the Reformation. Then there followed the despotic jurisdiction of the Star Chamber over the publication of books, and the Ordinances and the Licensing Act of Charles II.

At the commencement of the 18th century there was no statutory protection of Copyright. Unrestricted piracy was

rife. The existing remedies of a bill in equity and an action at law were too cumbrous and expensive to protect the authors' Common Law rights, and authors petitioned Parliament for speedier and more effectual remedies. In consequence, the 8 Anne, c. 19, the first English Statute providing for the protection of Copyright, was passed in 1710. This Act gave to the author the sole liberty of publication for 14 years, with a further term of fourteen years, provided the author was living at the expiration of the first term, and enacted provisions for the forfeiture of piratical copies and for the imposition of penalties in cases of piracy.

But in obtaining this Act, the authors placed themselves very much in the position of the dog in the fable, who dropped the substance in snatching at the shadow, for, while on the one hand they obtained the remedial measures they desired, on the other, the Perpetual Copyright to which they were entitled at Common Law was reduced to the fixed maximum term already mentioned, through the combined operation of the statute and the judicial decisions to be presently referred to.

But, notwithstanding the statute, the Courts continued for some time to recognise the rights of authors at Common Law, and numerous injunctions were granted to protect the Copyright in books, in which the term of protection granted by the statute of Anne had expired, and which injunctions therefore could only have been granted on the basis of the Common Law right. In 1769 judgment was pronounced in the great Copyright case of *Millar* v. *Taylor*.* The book in controversy was Thomson's "Seasons," in which work the period of Copyright granted by the statute of Anne had expired, and the question was *directly* raised, whether a Perpetual Copyright according to Common Law, and

* 4 Burrow's Reports, Queen's Bench, 2303.

independent of that statute, remained in the author after publication.

Lord Mansfield, one of the greatest lawyers of all times, maintained in his judgment that Copyright was founded on the Common Law, and that it had not been taken away by the statute of Anne, which was intended merely to give for a term of years a more complete protection. But, in 1774 this decision was overruled by the House of Lords in the equally celebrated pendent case of *Donaldson* v. *Beckett*,* in which the Judges consulted were equally divided on the same point, Lord Mansfield and Sir William Blackstone being amongst those who were of opinion that the Common Law right had not been taken away by the statute of Anne. But, owing to a point of etiquette, namely that of being a peer as well as one of the Judges, Lord Mansfield did not express his opinion, and in consequence, the House of Lords, influenced by a specious oration from Lord Camden, held (contrary to the opinion of the above-mentioned illustrious Jurists), that the statute had taken away all Common Law rights after publication, and hence that in a published book there was no Copyright except that given by the statute. This judgment caused great alarm amongst those who supposed that their Copyright was perpetual. Acts of Parliament were applied for, and in 1775 the Universities obtained one protecting their literary property. Space forbids recalling the passing from time to time of the present Acts of Parliament protecting Literary and Artistic property, the debates on which have in more recent times called forth the eloquence of Talfourd, Disraeli, and Macaulay.

Seeing the immense debt which the nation owes to authors and artists, it behoves us to enquire how we have discharged it. We shall find that we have done so only by

* 2 Brown's Cases in Parliament, 129.

depriving them of their ancient Copyright at Common Law by means of the combined legislative and judicial juggle to which I have alluded, and in substitution giving them only such imperfect protection as they may acquire under some 15 Acts of Parliament, so obscurely drawn as to be a disgrace to the Statute Book, and a mass of decisions in the Courts, which are only intelligible to the lawyer who has given them a life-long study.

In 1875, a Royal Commission on Copyright sat for a lengthened period, and presented a most practical and valuable Report, containing ample material for legislation. Bills have been introduced in the House of Commons in 1881 and successive years. There is ample material for an exhaustive codification of the Law on the subject.

The International Copyright Conference held last year at Berne, and the International and Colonial Copyright Bill recently introduced in the House of Commons by the Government, for the purpose of carrying out the objects of the Conference, constitute important steps towards Copyright Law Reform, but, useful on the one hand as the Bill will be, if it becomes an Act, it will also on the other further develope the piecemeal character which has unfortunately hitherto distinguished all efforts in that direction.

The main desideratum in the reform of the Copyright Law is a Code embracing the whole subject, containing so much of the present law as it is desirable to maintain, together with such amendments as may be found expedient.

The following are a few of the principal improvements which I venture to think are desirable.

As the Law stands at present, anyone can abridge a literary work, so long as the abridgement is, in the opinion of the Court, an independent work. It is obvious how such a condition of the Law is capable of encouraging plagiarism, and I think that the remedy ought to be that an author alone should have the right to abridge his own work. It

has occurred to me, and I have gathered from authors, that it would be very useful in the case of intended publications, if the Law, as in the United States, allowed the title to be protected during the preliminary stages of publication, and I think that the proprietors of books and newspapers should have absolute Copyright in the titles to these productions, independently of the rest of the publication, so that they may have a more substantial protection for their property than the present uncertain protection afforded to them under the doctrine of fraud and misrepresentation at Common Law, within the scope of which it is very difficult to bring skilful offenders, astutely advised by those acquainted with the obstacles to the application of this doctrine.

No doubt one of the most crying evils of the present Copyright Law is the unlicensed dramatisation of novels, where the novelist has not adopted the cumbersome process of first publishing his novel in dramatic form, and I submit that the author alone should have the right to dramatise his work.

Prominent amongst the subjects with respect to which the Law of Copyright requires improvement are paintings, drawings, photographs, and sculpture. In the first place, the term of Copyright given by the Artistic Copyright Act is much too short. The life of the artist, and seven years after his death, is, in the case of artists who die young, much too short a period to repay publishers for the heavy outlay in engraving and publishing their works. The Artistic Copyright Act, generally, is very unsatisfactorily "drawn," and every fresh professional acquaintance with it reveals its imperfection. To commence with section 1. The employment of the word author, in that section, with respect to a photograph, having regard to the number of persons concerned in its production, is very inappropriate, as was realised by the Judges in the *cause célèbre* of *Nottage*

v. *Jackson*,* when one of them put the paradoxical question whether the British Government, supposing they sent out people on board ship to take photographs of the transit of Venus, could in any case be considered the authors of the photograph?

Section 1 further provides that when any painting, drawing, or the negative of any photograph, shall be sold, or shall be executed for another person for valuable consideration, the person so selling shall not retain the Copyright unless it be expressly reserved to him in writing signed *at or before the time of such sale* by the vendee or by the person for whom it is executed, but the Copyright shall belong to the vendee or to the person for whom it is executed. Now the obvious intention of the Legislature (when the clause was first drafted) was, that in the absence of a written reservation by the vendee of the Copyright in favour of the vendor, the vendee should acquire the Copyright. This is intelligible enough, but by some blunder (presumably made in the passing of the Act) there follows on a sentence which says, "nor shall the vendee be entitled to any such Copyright unless *at or before the time* of such sale an agreement in writing signed by the person so selling shall have been made to that effect." Now the result of this is that on sales of pictures, unless there is a written agreement signed by either vendor or vendee *at or before the time* of such sale, and in ninety-nine sales out of a hundred there is no such agreement, the Copyright disappears altogether. The Legislature evidently intended that the effect of the clause should be that, one or the other, either the seller or the purchaser, should acquire the Copyright, whereas the result of the careless drafting of the Act is that, in such a case, neither party acquires the Copyright, and the picture is open to be copied by anyone

* L.R. 11 Q.B.D. 627.

who can obtain access to the original. There has been much controversy as to who is the proper person to possess the Copyright in a picture, whether the artist or the purchaser. The artists, headed by the Royal Academy, of course consider that they should retain it. The Royal Commissioners, however, recommend that, in the absence of a written agreement to the contrary, the Copyright in a picture should belong to the purchaser, and follow the ownership of the picture. The recent Copyright Bills introduced in the House of Commons give the Copyright to the artist, and I am in favour of allowing the artist to retain the Copyright for the following reasons. If the Copyright went to the purchaser, in the absence of an agreement to the contrary, it would be necessary for an artist on the sale of his picture, if he wished to retain the Copyright, to broach the subject of the intended reservation of the Copyright to the proposing purchaser. Now there is undoubtedly a great repugnance amongst artists to mentioning their retention of the Copyright on the sale of a picture, and their repugnance is a very natural one. The sale of a picture is a very delicate and precarious matter, especially if the artist is not a very eminent one, and the slightest allusion to the retention of the Copyright by the artist might mar the sale of the picture, for the proposing purchaser would very likely think that he was being deprived of something which he ought to have. This feeling might in a great many instances prevent the sale of the picture. Moreover a publisher, or other person having in view the acquisition of the Copyright in a picture, either with the picture or without it, may fairly be expected to know the law, and to take care that he acquires the Copyright. This might easily be legislatively provided for by his obtaining a memorandum in writing signed by the artist. It would not by any means be such a delicate matter for such persons to arrange the acquisition of the

Copyright with the artist as it would for the artist to arrange its retention by himself on the sale of the picture to some private patron. Such an agreement is only what publishers and others desiring to acquire the Copyright in pictures have been accustomed to since the passing of the Artistic Copyright Act of 1862. Moreover, I think that an artist should be entitled to protection for the entire result of the power of his brain, that is to say, what he can obtain for the picture and what he can obtain for the Copyright in addition, in analogy to the rights of dramatic authors, and musical composers, who obtain every accretion to the value of their works, including the pecuniary value of their Literary Copyright and the value of their rights of representation. In addition, I think that if the advantages of one plan as compared with the other are argued on the basis that both artist and purchaser are ignorant of the law, which, however, is an unsatisfactory argument, though one often resorted to, I consider that a greater hardship would be caused by the artist unknowingly depriving himself of his Copyright, than by the purchaser of a picture unknowingly depriving himself of an accretion to the value of his purchase which he never contemplated, for, as I have pointed out, a purchaser whose object is the acquisition of the Copyright as well as the picture can easily attain it. Further, I think that the purchaser of a picture should be satisfied with the acquisition of the picture itself, in analogy to the buyer of a book; but, on the other hand, I think that the artist should be satisfied with the substantial boon of Copyright given to him, and rest contented with his rights to the sale value of his picture, and the value of the Copyright in addition, and should not be allowed to detract from the value of his picture to the purchaser by being allowed to make replicas of it, subject to the following modification. The Copyright which I suggest the artist should retain, would be valueless to him unless he

could prevail upon the owner of the picture to allow the work to go out of his possession for the purpose of being engraved. Unless the artist has made a replica of it, he cannot, without such permission, have it engraved. I think, therefore, that the artist should be allowed to make one replica for this purpose, but for this purpose only, and that any further execution of replicas would be an unfair return by the artist for the privileges given to him. The replica allowed should be of a smaller size than the original work, so as to be distinguishable from it. This replica, of course, could be sold, should the artist wish. One advantage to the artist in the retention of the Copyright would be that he could prevent inferior reproductions of his work from being made, and the public would know better to whom to apply for the Copyright. The allowance of one replica should not prevent the artist from disposing of sketches and studies used in executing the work. Many other defects in the Artistic Copyright Act could be pointed out, if space permitted.

The purchaser of a portrait or a portrait bust should have the Copyright, as he would under the existing Law if he gave a commission to an artist to execute such works.

By the present Law where a photograph is executed on commission, the Copyright belongs to the person commissioning the photographer, whilst the negative belongs to the photographer. In non-commissioned works, the Copyright belongs to the photographer. In either case the sitter is practically unable to prevent the unlimited exhibition of his or her portrait in shop windows.

I consider that Copyright in a photograph should be given to the photographer or his employer. When photographic portraits are taken on commission, the Copyright should belong to the commissioner, and copies should not be sold or exhibited in shop windows without the written consent of such commissioner.

As the Law now stands, the following persons are capable of acquiring Copyright in the British Dominions.

A natural-born or naturalised subject, in which case the place of residence at the time of publication is immaterial.

A person who at the time of the publication owes local allegiance by residing in some part of the British Dominions.

It is probable, but not certain, that an alien friend, who first publishes in the United Kingdom, but is resident out of the British Dominions, acquires Copyright in the British Dominions.

I think that, acting in the spirit which dictated the Naturalization Act, 1870, we should throw open the acquisition of Copyright throughout the whole of the British Dominions, to natives and foreigners alike, wherever they are resident, so long as they first publish in the British Dominions.

As to the place of publication; by the present Law, Copyright acquired in the United Kingdom extends to every part of the British Dominions, but if a book is published in any part of the British Dominions other than the United Kingdom, the author cannot obtain Copyright either in the United Kingdom or any of the Colonies, unless there is some local Law in the Colony of publication under which he can obtain it within the limits of that Colony. This Law is obviously unfair to the Colonies, for a British subject publishing in the United Kingdom acquires Copyright throughout the British Dominions, whilst a Colonist can only obtain such Copyright by first publishing in the United Kingdom. A colonist is in even a worse position than a foreigner with whose country we have a Copyright Treaty, for the foreigner, first publishing in his own country, can, by means of the treaty, acquire Copyright throughout the whole of the British Dominions, whilst the Colonist cannot secure his Copyright in the British Dominions unless he first

publishes in the United Kingdom. This Law does not apply to paintings, drawings, and photographs, for it appears that by section 1 of the Artistic Copyright Act, a British subject resident within the Dominions of the Crown has the Copyright in these whether made in the British Dominions or elsewhere, therefore a Colonial artist acquires the Copyright in his painting executed in the Colonies, throughout the British Dominions, whilst a Colonial author, publishing in the Colonies, does not (unless there is a local Copyright Law to that effect) even acquire the Copyright for his book in his own Colony, and does not acquire it at all in the rest of the British Dominions. Here is another glaring instance of the anomalies of the present Law. The Law would rest upon a broad and uniform basis if the publication of all Copyright works in the British Dominions should confer Copyright within the same limits. The before-mentioned International and Colonial Copyright Bill will, however, if passed, probably modify this anomaly.

The irregularities of the present Law are well shewn by the various terms of duration applied to the different subjects of Copyright and performing right.

The term of Copyright in books, and in printed and published dramatic pieces, and musical compositions and of the peforming right in the last, is the life of the author and seven years from his death, or forty-two years from the date of the publication, whichever is the longer.

The term of performing right in dramatic pieces not printed and published, but publicly performed, is doubtful, and may perhaps be perpetual.

The term of Copyright in a lecture not printed and published, but publicly delivered, is wholly uncertain.

The term of Copyright in a lecture printed and published is the longer of the two periods of twenty-eight years and the life of the author (provided the statutory declaration of

the proposed delivery of the lecture has been made to twc Justices of the Peace within a specified radius of the place of delivery).

The term of Copyright in engravings is twenty-eight years from publication; in paintings, the artist's life and seven years; in sculpture, fourteen years from publishing, fourteen years more being given to the sculptor if he is living at the end of the first term.

It seems quite unnecessary that our memory should be taxed with the recollection of all these different periods when the different subjects of Copyright are, from their kindred nature, susceptible of the application of one common term of duration. The question, therefore, is what should be the duration of such term. The Royal Commissioners recommend the term adopted by Germany, namely the life of the author, and thirty years after. But, if the system of registration, which I shall presently recommend, be carried out, the date of the registration of the work would be the best time for the term of the Copyright to commence, so that by simply referring to the Copyright Registry, the date of the termination of Copyright could be immediately ascertained. I consider that a period of fifty years from the date of the registration of the Copyright would be a suitable term for all the subjects of Copyright. This period would preserve the Copyright to the author for a sufficient period, should he be long-lived, and would be of sufficient duration to benefit his family in the event of his early decease.

The keystone, in my opinion, to the requisite improvements in the Law of Copyright is a carefully-considered system of Registration for all the subjects of Copyright. An imperfect system of Registration is now provided for books, musical compositions, paintings, drawings, and photographs, but not for the other subjects of Copyright or performing right. A system of Registration for Trade

Marks has now been in successful operation for ten years, and a system of Copyright Registration would not present greater difficulties. The present system of Registration is of no benefit to anyone. It gives the author no protection whatever. It does not protect the titles of the works of different authors as against one another, and is only a useless formality prior to taking legal proceedings. A well-constructed system of Registration would confer great certainty and stability on Copyright property.

In order to make Registration efficacious and universally resorted to, it should be made compulsory, for it is an axiom that optional legislation is useless legislation.

In considering the locale of Registration, it must, I think, be admitted that the universal opinion of everyone practically connected with the subject is adverse to the maintenance of the *régime* of Stationers' Hall. Obviously, the Copyright Registry should be made a Department of State, and for the reasons I shall presently give, I think that it should be made an adjunct of the British Museum. An officer, entitled the Registrar of Copyright, should be appointed. He should be a lawyer, well conversant with the subject. The Registration of the work, and the deposit of a copy for the British Museum, should be one and the same act. Two acts have now to be performed, Registration at Stationers' Hall, and the deposit of the work at the British Museum. This is my reason for suggesting the propinquity of the Copyright Registry to the British Museum. The Registry could be supported entirely on the fees paid for Registration, which, having regard to the extension of the subjects of Registration, might be reduced to one shilling, or even sixpence, in lieu of the present fee of five shillings. The amount of fees taken in the Registry would cover all expenses and probably even yield a profit to

the Revenue, and in order to spare persons in the country the trouble of registering at the Central Registry, some plan might be adopted by which they could effect registration by means of local Post Offices.

In order to effect compulsory registration, the Copyright owner should be compelled to register within one month from the date of publication. After this period, he should not be permitted to have any remedies whatever in respect of anything done previous to Registration, nor in respect of any dealings subsequent to Registration with things so made or done before Registration, and if possible, the certificate of Registration should confer an indefeasible title, or at least a *primâ facie* one.

It may be suggested that it would be absurd to register every work of Literature or Art however trifling, but I think we may be certain that this will not be done in practice for the following reasons.

The deprivation of all their remedies until Registration, as before-mentioned, would be a sufficient inducement to Copyright owners to register all works which they may consider of sufficient importance to protect from piracy, especially as it is proposed that they should be able to do this for a very trifling fee. The result, therefore, would be that only such works would be registered, and trifling works would be left to their fate. With regard to paintings, drawings, and sculpture, there would be no necessity to register these while in the possession of the artist, for the reason that it would be difficult for a pirate to obtain access to them, and the number of such works would also be an insuperable obstacle to their Registration. But when parted with by the artist, they should be registered in common with all the other subjects of Copyright. Until such works are parted with, the artist should be allowed protective powers as if he had registered.

It is a matter of regretful consideration that in the construction of a new Copyright Code effectual means must be devised for the suppression of piracy and fraud. The present Law errs sadly on the side of leniency to evil doers, and leaves great difficulties in the way of artists, art publishers and others endeavouring to protect their rights. Nevertheless, private efforts in this direction have not been wanting, and amongst these I may instance the Social Science Association, at whose meetings the subject has been much discussed, and the Printsellers' Association, who take an important part in protecting the public against spurious prints.

No scheme of Copyright Reform would be complete without dealing with Colonial and International Copyright, and the Royal Commissioners have suggested many valuable improvements in this branch of the subject, both including suggestions for giving Foreign Authors greater facilities for the protection of their rights generally, and for enlarging the term of their rights over the translation of their works in the British Dominions, and the before-mentioned International and Colonial Copyright Bill is directed towards the attainment of these objects.

In dealing with International Copyright we are met on the very threshold of the subject with that barrier to any complete system of International Copyright, the American question.

British authors, artists, musical composers, and publishers suffer great hardship and inconvenience by reason of their not being able to acquire Copyright for their works in the United States. These are reprinted and recopied there in a wholesale manner, without their receiving any, or at the best, but scanty remuneration for them, and authors are further injured by the importation into our colonies of American copies of their works. Speaking of books, these hardships are aggravated by the fact that an American

can obtain Copyright for his work in both countries by simultaneous publication in this country and his own, whilst an Englishman can only obtain Copyright in his own country.

For a considerable period the principal American publishers have protected themselves by means of procuring advance sheets and stereotype plates from the British publishers, paying to the British authors sums averaging ten per cent. of the sums the latter receive for their works in England. This enabled them to publish their first edition, which they protected amongst themselves by a sort of trade courtesy, by which they recognised as much of an exclusive right to certain publications as was possible under the circumstances.

After the sale of the first edition the cheap publisher intervened, but the first publisher, owing to the advantage he had obtained in time, was generally able to hold his own against the cheap publisher in the sale of the second edition. This system of "Courtesy Copyright," however, has lately broken down, owing to the action of publishers in certain States of the Union, and thus those halcyon days for the American publisher have passed away. The cheap publishers of the West are so preying upon and underselling the leading publishers of the Eastern States that the latter are denuded of all their former profits, and the American people are lamenting that the Literature and Art of their country have both been ruined by half a century of a system of unfettered publication of British works, under which their native Literature and Art have received but little encouragement in consequence of their publishers being able to appropriate Foreign Literature and Art for nothing or next to nothing.

The mutual protection to their Literature would be an incalculable boon to both nations. For us, it would throw open vast fields amongst the ever increasing population

of the United States for the dissemination of British Literature and Art. It would vastly increase the rewards of authors and the legitimate gains of publishers, and it would cheapen the price of books in this country without any increase in their price to the American public. For the Americans, it would invigorate their Literature and Art, and would greatly benefit their authors and artists by extending their Copyright to the British Dominions.

Happily, the dawn of hope for the settlement of the question has appeared upon the horizon. Recent decisions in the American Courts in favour of the right of American assignees of British publications to protect the titles of those publications as trademarks, and in favour of American assignees of British playright, have shewn a tendency to do us justice, and the recent enquiry by the Committee of the Senate of the United States with respect to the advisability of passing one or other of the Copyright Bills introduced by Senator Hawley and Senator Chace respectively, afford some ground for hope that the cause which is at once that of justice and of sound policy will ere long triumph, and sweep away all obstacles to the attainment of International Copyright between the two great English-speaking nations, which have an equal interest in the English Literature of both sides of the Atlantic.

The subject of Copyright is necessarily complex, being both National and International, but it might easily be dealt with by a Grand Committee of the House of Commons. The material is ready to hand. The Bill of 1881 carefully amended would probably form a satisfactory Copyright Code. The interests of authors, artists, and composers should no longer be neglected. The Legislature should act in the spirit of Magna Charta which says, *Nulli negabimus aut differemus rectum vel justiciam.* In this spirit, I have penned the foregoing remarks, and what

labour I have bestowed on them will not be thrown away if they in any degree hasten the advent of Copyright Law Reform.

THOS. A. ROMER.

[*Note.*—On several of the questions discussed in the above article, there will naturally be differences of opinion, and we simply open our pages to their discussion, without necessarily sharing the views expressed. From this standpoint, we have already printed an entirely different suggestion as to the duration of Copyright, in a previous number of this *Review*, in an article on Copyright Reform and the Report of the Royal Commission, by C. H. E. Carmichael, M.A., *Law Magazine and Review*, No. CCXXXIV., for November, 1879, where the personal feeling of the writer was in favour of the French period of author's life and fifty years, though with a willingness to accept the more widely received period of author's life and thirty years. With regard to the prospects in the United States, while we cannot profess to like the "Manufacturing Clause" which appears in Senator Chace's Bill, we yet would heartily re-echo our valued contributor's desire that the cause of Justice may ere long triumph in the United States, and so hasten the accomplishment, in the matter of Copyright, of the Federation of the Republic of Letters.—ED.]

III.—LIEGEMEN AND ALIENS.

A RECENT Election Petition, carrying us back, as it does, in the considerations which formed the basis of the Judgment, not only to the date of the Union of the Scottish and English Crowns, but much further up the stream of time, to the Feudal origin and meaning of the tie of Allegiance, seems to deserve some notice, however brief, in the pages of this *Review*.

The point before the Court was whether certain Hanoverians, born under the allegiance of a King who ruled both over Great Britain and Ireland and Hanover, and now resident in this country, were Liegemen or Aliens here, since the separation of the Hanoverian and British Crowns.

The question, how we shall know a Liegeman from an Alien, is one of considerable practical interest in a country where so many persons reside as to whose precise relations to the Crown doubts might easily arise, which would not be readily capable of solution.

Some of the doubts which always surrounded the Feudal doctrines were in truth never solved during the reign of Feudalism, and they are little likely to be solved now, when the relics of the system are fossils, embedded among the more liberal strata of modern Legislation.

But it is scarcely probable that a satisfactory solution can have been reached in a case where it has been enunciated from the Bench that a state of things which can be demonstrated to have been the Law throughout Feudal Europe, cannot be the Law of England. The state of things thus condemned may have deserved the condemnation which it has received, but the facts of its former universal application in the West are not thereby effaced from History, nor is

the practical difficulty avoided arising from the continued existence and application of similar facts in a Modern World which knows not Feudalism.

The mediæval history of England and of all Western Europe is full of cases in point, and the documents which could be cited are too numerous for more than a very few samples to be offered for consideration in our present brief notice of the subject.

When the Duke of Normandy became King of the English, the Norman barons who followed his standard as that of their Liege Lord were rewarded with lands in the country which they had helped to conquer. This involved a twofold allegiance from them to him as King and as Duke. But the Norman Duke had his own Liege Lord in the person of the King of the French. It was therefore quite possible that at some date a conflict might arise between the two allegiances of the Anglo-Norman barons, and this is, in point of fact, what occurred. The day came when the holders of English and Norman baronies had to choose under which Lord they should range themselves, and they lost one of their two homes according to the choice made. The loss might have been only temporary, but as events turned out the choice then made was irrevocable, and it fixed the racial character of the history of more than one distinguished baronial house. Probably to the baron who made the election it seemed a small matter, and various local and temporary circumstances may have inclined the balance one way or the other. For a time, no doubt, he tried to persuade the King who had seized his forfeited lands to restore them to him. But the answer on either side was plain and decisive. The French King would only restore the lands in Normandy when the English King consented to give back the lands in England forfeited by those who had adhered to him. And the English King would only restore the lands in England when the French

King gave back the broad acres of fertile Normandy lost to those who were faithful to their English Liege Lord.

Among the sufferers by their decision on this knotty point of allegiance were members of the Norman Duke's own family, such as the illustrious Counts of Eu, Lords of Tickhill and of Hastings in England. The latest historian of that house, Mr. R. E. Chester Waters, B.A., in the course of an interesting Paper in the *Yorkshire Archæological and Topographical Journal* for 1886, refers pointedly to this turning-point in their history.

Describing the aspect of France at the opening of the Thirteenth Century, Mr. Chester Waters remarks that it was at that time distributed into petty States governed by Sovereign Counts, who were "generally vassals both of England and France, and therefore in times of war between the two countries had to choose between conflicting obligations of allegiance. The Lusignans were leading members of this powerful aristocracy, who were almost unanimous in resenting the wrong done to one of their number" by the perfidy of King John of England in carrying off Isabella of Angoulême, the promised wife of Hugh de Lusignan, the eldest brother of Ralph, Lord of Issoudun, Count of Eu *jure uxoris*. "The strong castles of Eu and Drincourt," Mr. Waters continues, "were the keys of Normandy," so John did not dare to leave them in Count Ralph's hands.

By writs dated at Clipstone, 9th March, 1201, John gave notice, in correct feudal style, that "his lieutenants had permission to do what harm they could to Ralph Count of Eu, in the war which was to commence at the close of Easter." On the same day, "letters were addressed to the burgesses of Eu and to the inhabitants of the county of Eu, and to the men of Drincourt, and to all who dwelt within the castelry of Drincourt, commanding them to put faith in what the King's envoy should say to them on his

arrival." Ten days later, John ordered his Seneschals of Normandy and Poitou to "seize on the lands of all who refused immediate submission." To justify these strong measures, John alleged that Count Ralph had defied him without just cause: "not for our fault, but through his own pride. Wherefore we bid you to do all the evil ye can to him and his, and to receive in your town those whom we shall send."

The Count of Eu appealed against John, his immediate Lord as Duke of Normandy, to the King of France, as his Duke's Suzerain, or over-lord, and the King, it is scarcely necessary to say, decided that John had forfeited all his rights over the castles of Normandy.

By 1204, all Normandy was lost to the descendants of the Conqueror. When, some half century later, there was peace between England and France, the French King interested himself on behalf of the then Count of Eu,—also, as it happened, *jure uxoris*,—Alfonso de Brienne, and asked the English King to restore the honours of Tickhill and Hastings, the English inheritance of Countess Mary. The answer, made in the hearing of the Count of Eu himself, was terse and unequivocal: "When the King of France restores to Englishmen their lands in Normandy, I will give back to Frenchmen the lands and tenements which were theirs in England." And the same was the reply on a fresh application in 1290. By this time the descendants of those Norman barons who had chosen the side of their English Lord had become Englishmen, and those who had sided with the French over-lord of their Norman Lord had become Frenchmen. The question as to allegiance had now become a simple one for either side, unless, as happened in the case of the Counts of Eu, fresh complications arose through fresh inheritances in the land which had been practically abandoned.

In point of fact, allegiance was seldom a simple question

throughout the Middle Ages, as it was frequently complicated by the coincidence of conflicting duties in the same person. A recent writer on the subject, M. Ad. Baudoin, in the *Nouv. Rev. Hist. de Droit* (Paris : Larose, 1883), who has brought forward a new view as to the etymological meaning of the word "Liege," has well pointed out how the same person might owe homage to as many as ten different lords. And the possibilities of discord to which such a parcelling out of Feudal obligations might give rise were guarded against, as well as it was possible to guard against them, by precautionary measures. Thus, for instance, the Liegeman is not to sit in a Court of Peers judging his own Liege Lord. And he is to dwell on the fief which he holds of his natural Liege Lord, viz., the one who has the primary right to his service. Other Lords received his homage in the second, third, fourth, or fifth degree. This, as M. Baudoin truly remarks, was an abuse of the expression, and the Lords in question probably knew that it was such, but it was convenient, and they could not have found in the existing Feudal language anything better calculated to give a fair notion of the rights which they claimed.

In its original sense, says M. Baudoin, "ligeance" is nothing more than the duty which a subject owes to his Sovereign. A man was the Liegeman of the Lord, be he King, Duke, Count, or Bishop, who ruled the land where he was born, and such ruler was his immediate and natural Liege Lord. He might, as we have seen, have several other Lords in varying degrees. The Liege Lord appears, according to M. Baudoin, to be the *legis dominus* or lawful Lord, the Lord given by Law, and his Liegeman is *legi subjectus*, or *obnoxius*, the subject of Law. In the Latin text which defines that the Duke of Normandy has the allegiance of all the men of Normandy, the phrase runs, *Ligantiam autem, sive legalitatem de omnibus hominibus solius*

[quære, totius] provinciæ debet habere princeps Normanniæ. (Baudoin, *op. cit.*, citing a MS. translation of the *Coutumier.*)

In the case of the Stepney Hanoverians, the same Lord had, at their birth, given Laws to Hanover and to England, as the same Lord had given Laws to England and to Normandy. It seems to follow that, on Feudal principles, he was their Liege Lord in both countries. And although this had ceased to be true of both countries, those of them who remained resident in England certainly owed allegiance to the Lord or Lady of England. If they owed this duty, it might well be argued that they should enjoy the privileges of their English subjection and be entitled to a vote, if otherwise qualified, as they, to all appearance, would admittedly have been entitled, had the same Lord continued to give Laws to Hanover and to the United Kingdom of Great Britain and Ireland. It cannot be doubted that, whether they know it or not—and in some cases it may well be that those who owe allegiance are ignorant of the fact—many persons are at this day in the possibly awkward position of owing a twofold allegiance. Birth on the soil of a foreign country may have impressed upon them the character of a national-born subject, sometimes with, but sometimes also without, the power of option on attaining majority. It has already been pointed out in this *Review* in an article on Naturalisation and Mixed Marriages in France (*Law Magazine and Review*, No. CCLVI., for May, 1885) to what difficulties this state of things might give rise. We do not dispute the existence of these difficulties, but we do not therefore deny the facts. We do not say that they cannot be so, as seems, in despair, one might think, to have been said by the Lord Chief Justice in the Stepney case. But we do think that it is useful to point out the existence of certain difficulties, in order that the countries concerned may come to some arrangement satisfactory to both sides. Where the tie of allegiance

arising from the place of birth is indelible, this cannot be done by anything short of an absolute change in the law. Where it only subsists, after majority, through an act of option, if that act has not been performed, no difficulty ought to arise. But if, as we have seen to be the case, a country, in its desire to swell the ranks of its land and sea forces, gives facilities for the passing into those ranks of minors who cannot lawfully change their nationality of origin, then conflicts may easily arise, and this is what was carefully pointed out in the pages of this *Review*, in the article cited above.

Concerning Aliens, much might be said, tending to shew, *inter alia*, their very precarious position in some of the leading countries of the Continent, did space and time admit of our saying it at the present moment.

The wholesale expulsions which have taken place of late from the territories of Great European Powers deserved more general attention than they received. We had already seen the dangers to which Aliens might be exposed by the sudden raising of a political cry, or the sudden uprising of a political difficulty, and we have given space to the expression of some reflections on a kindred subject in an article on Extradition and the Right of Asylum (*Law Magazine and Review*, No. CCXL. for May, 1881). We are glad to see that the later phase of the question—that of Expulsion—has drawn forth an article from the pen of the distinguished German Jurist, Von Bar, in the first number for 1886 of our valued *confrère* M. Clunet's *Journal du Droit International Privé* (Paris, Marchal et Billard). The general insecurity of the position of the Alien, though he be, *ex hypothesi*, an Alien friend, is strikingly shewn by Von Bar, and we cannot but agree with the note appended to the article, commending the Belgian Law to the attention of the Legislature in France, as containing in its requirement of a Royal Decree in each individual case of expulsion,

securities which are entirely absent from the existing French system of an irresponsible Ministerial Decree. It seems not too much to say that, in France, the Alien friend sojourns by the grace of the Home Minister for the time being. But one Ministry sometimes gives place to another with extreme rapidity, and the change of views represented may at any moment be adverse to the country of a given Alien. The favourite of yesterday may be the bug-bear, almost the enemy, of to-morrow. It were well, in the interests of Justice that the Alien friend should be able to sojourn in tranquillity in the land where he has sought change of scene, and where he has hoped to find a much needed rest, looking out, it may be, upon the snowy peaks of the Pyrenees or the Alps, or on the blue waters of the "tideless mid-land sea."

IV.—FOREIGN MARITIME LAWS.

II.—ITALY. CODE OF COMMERCE. Book II. Title III.

Of the Engagement and Wages of the Crew.

Art. 521. The persons composing the crew are, the captain or master [*padrone*], the officers, sailors and ship's boys [*mozzi*], and the artificers named in the muster roll drawn up in the manner appointed by the regulations, and in addition, the engineers and firemen, and all other persons employed under any designation about the engines in steam vessels. The list [*ruolo*] of the crew must state the wages or share in the profits due to the crew. The other conditions of the engagement must be established by the contract of engagement (shipping articles).

Cf. B. 47, F. 250, G. (1872) 3, 10—13, 24, 25, H. 395, N. 28, P. 1441, S. 699, Sw. 24, E. 65.

M. and P. 195; Macl. 202; News. 26; M.S.A. 1854, § 2., "Seaman."

522. The contract of engagement [*contratto di arruolamento*] must be made in writing and before the local Marine Administration, if within the realm, and before the Consular officer, if abroad. It must be entered on the registers of the office, and copied into the Nautical Journal [*giornale nautico*].

If anyone is shipped in a place abroad where there is no Consular official, the contract must be written down in the Nautical Journal.

In every case the contract must be signed by the captain and person shipped, and if the latter is unable to sign, or does not know how to write, then by two witnesses.

Agreements made without these formalities are of no effect.

The preceding regulations are not obligatory in the case of agreements for the vessels and voyages mentioned in Art. 501 (*a*).

(*a*) See Art. 75 of the order for putting the Commercial Code in force (*post*).
G. (1872) 12, 24, H. 395, 396, N. 28, P. 1441, 1442, R. 935, 937, 938, 947, S. 699.

M.S.A. 1854, §§ 149, 150; M.S.A. 1873, §§ 7, 8; Merchant Seamen (Payment of Wages) Act, 1880, §§ 3, 8.

523. The agreement states clearly and precisely its duration and the voyage in respect of which it is made. The destination and voyage may be kept secret on account of trade speculations, provided the crew are warned, and agree to ship under such conditions. Their consent must be set out in writing in the form appointed by the preceding article.

G. (1872) 12, H. 397, N. 28, P. 1442, R. 938, 939.

M.S.A. 1854, § 149.

524. A person shipped is bound to serve, even after the term of his engagement has expired, until the return of the vessel to its destination within the realm, provided it returns direct, and with only necessary ports of call. In this case, the person whose engagement is prolonged has a right to [extra] payment in proportion to his wages.

The seaman's engagement is always considered as terminated, even before the agreed term has expired, when the ship has returned to its place of destination within the realm, after the completion of the first voyage and has been unloaded.

Cf. B. 51, F. 255, G. (1872) 41, H. 415, 441, N. 29, 30, P. 1460, R. 985, S. 714, Sw. 55, E. 70.

M.S.A. 1854, § 187; M. and P. 179, 227; Macl. Chap. V.

525. If the term of the engagement [*arruolamento*] is not stated, the seaman can demand his discharge after two years of service, saving the exception in the preceding article. If the vessel is abroad, and a voyage back to the realm is neither commenced nor ordered, the seaman has a right, in addition to the payment of his wages earned, to the expenses of his return home, unless the captain obtains a berth for him.

A seaman cannot claim his discharge in a port of call or distress [*porto di scalo, o di rilascio*], but only in that of destination. An engagement for an indefinite time and for all voyages that may be undertaken does not hinder the seaman from being able to claim his discharge after two years, and unless it is expressly agreed that the service may continue beyond two years.

B. 62, F. 270, G. (1872) 61, 66, 71, 98, N. 29, S. 703.

M.S.A. 1854, § 190; M. and P. 138, 178, 179; Macl. Chap. V.; News. p. 32.

526. On the termination of the engagement, the captain must give each member of the crew a discharge in writing. The discharge must show the name and description of the vessel, the name and surname of the captain, and the date of embarkation, and must be entered on the Nautical Journal.

When from any cause the captain is unable to write out the discharge, it must be written in his presence by the mate [*secondo*] of the ship, and signed by him and by two witnesses.

M.S.A. 1854, § 176; M. and P. 200, 211, 232; Macl. 212; News. § 29.

527. The captain and members of the crew may not, under any pretext, take any merchandise on board the ship on their own account, without the permission of the owners, or without paying freight, unless they are authorised to do so by the terms of their agreement.

Cf. B. 66, F. 251, the first clause of which is indentical. G. 514, 565, H. 352, 410, N. 12, P. 1402, 1404, 1455, S. 654, 656, 761, Sw. 63, 83. E. 66.

M. and P. 122; Macl. 172; News. § 70. The cases in England do not go further than requiring the master to hand over all profits to the owner and all commissions except primage.

528. Wages are due to seamen shipped by the month from the day on which they are entered on the muster roll, unless otherwise agreed.

M. and P. 216, 217; Macl. 207; News. § 27.

529. If the voyage is broken up by the act of the owners, captain, or charterers, before the departure of the vessel, seamen engaged by the run or by the month have a right to be paid for the days they have been employed in fitting out the ship, and retain advances [*anticipazioni*] which they have received as compensation.

If no advances have been paid, seamen engaged by the month receive a month's wages as compensation; those shipped by the run receive a sum equivalent to a month's pay calculated on the probable length of the voyage, and if the probable length does not exceed one month, they receive the whole amount agreed upon.

If the voyage is broken up after the ship has commenced it—

(1.) Seamen shipped by the run have a right to the whole of the wages agreed on;

(2.) Seamen engaged by the month have a right to their wages for the time actually served, and in addition they have a right to compensation equivalent to the wages they would have earned during the probable term of the voyage for which they shipped;

(3.) Seamen engaged either by the run or by the month

have, in addition, a right to the expenses of returning to the place whence the vessel sailed, unless the captain or any other person concerned, or a competent authority, obtains them a berth on board a vessel returning to the place where they shipped.

Cf. B. 48, F. 252, G. (1872) 56—63, H. 411, 412, N. 31, P. 1456, 1457, S. 707, 708, Sw. 57, 60. E. 67.

Macl. 216, 224; M. and P. 210; News. § 27.

530. If trade is prohibited with the place of the ship's destination, or if the ship is stopped by order of the Government before the voyage has commenced, the seamen are only entitled to payment for the days they have been employed in fitting out the ship.

Cf. B. 49, Id. F. 253, Id. G. (1872) 56, 63, H. 413, N. 31, P. 1458, S. 711, 712, Sw. 56, 58, 60. E. 68.

M. and P. 223; News. § 27.

531. If the trade is prohibited or the vessel stopped in the course of the voyage:—

(1.) In case of prohibition, the seamen are entitled to wages in proportion to the term they have served;

(2.) In case of the vessel being stopped, seamen engaged by the month are entitled to half their wages during the stoppage, and seamen shipped by the run are entitled to their wages according to the terms of their agreement.

If compensation is granted for the prohibition or stoppage, seamen engaged by the month receive the balance of their wages, and seamen shipped by the run receive an increase of pay in proportion to the period of the stoppage, but the compensation to all the seamen must not exceed the third part of the compensation granted to the ship.

Cf. B. 50, F, 254, G. (1872) 56—63, H. 414, 416, N. 30, 31, P. 1459, 1461, S. 715, Sw. 43, 56, 58, 60, E. 69. The last clause as to the shares of seamen in compensation granted for an embargo is not found in the other Codes, except those of H. 416 and P. 1461, in certain circumstances.

M. and P. 223; Macl. 217; News. § 27.

532. If the voyage is extended, the wages of seamen

shipped by the run are increased in proportion to the extension.

B. 51 and F. 255 Id., Cf. G. (1872) 41, H. 415, N. 29, 30 P. 1460, R. 985, S. 714; Sw. 55, E. 70 (Id.).

M. and P. 138; Macl. 205.

533. If the vessel is discharged voluntarily at a nearer place than that stated in the charter-party, the wages of the crew are not liable to any diminution in consequence.

B. 52 and F. 256, Id., Cf. G. (1872) 54 Diff., N. 31, P. 1460, S. 714, Sw. 55, E. 71 (Id.).

534. Seamen shipped on shares in profits or freight, have no claim in respect of the days on which they were employed, nor to compensation, when the voyage is broken up, hindered, or prolonged by a casualty, or by circumstances beyond control (*forza maggiore*). If the voyage is broken up, hindered, or prolonged by the act of the charterers, the crew share in the compensation adjudged to the vessel. This compensation is apportioned amongst the shipowners and the crew in the same proportion as the freight would have been. If the hindrance resulted from anything done by the captain or owners, they are bound to compensate the crew.

B. 53 and F. 257 (Id.), Cf. H. 416, P. 1461, S. 715, E. 72.

535. Seamen have no claim for any wages in case of capture (*preda*), breaking-up (*rottura*), or shipwreck resulting in total loss of ship and cargo.

But they are not liable to restore advances received.

B. 54 Diff., F. 258 Id., Cf. G. (1872) 32, 33, 56—63, H. 418, N. 30, 31, 33, P. 1463, R. 986, 987, 988, Germany 56, Norway 33, Sweden 59, S. 716, 721, Sw. 59, 60, E. 73, 74. In European States other than England, since 1854, and Belgium, 1872, the ancient principle that "Freight is the Mother of Wages" is still adhered to.

M. and P. 220—223; Macl. 215, 222; News. § 27.

536. If any portion of the vessel is preserved, seamen shipped by the run or by the month are paid out of the proceeds of the wreck, or out of whatever has been recovered out of the prize.

If the proceeds of the salvage or recapture are insufficient, or if goods alone are salved, they are paid subsidiarily out of the freight. Seamen shipped on shares in freight are paid in proportion to the freight earned.

Seamen are paid for the days they are employed in salving the wreckage and shipwrecked goods, no matter in what way they are hired.

Cf. F. 259, H. 419—421, P. 1464—1467, S. 716, and E. 74, 76, which are almost identical, and B. 54, 56, G. (1872) 32, 36, 56, N. 33, R. 959, Sw. 181, which more nearly follow the English law.

M. and P. 242; Macl. 235.

537. A seaman who falls sick during the voyage, or who is wounded in the service of the ship, is paid his wages and is nursed and medically attended at the ship's expense. If he is wounded whilst ordered on duty in the interest of both ship and cargo, he is nursed at the expense of ship and cargo.

If it is necessary that he should be landed for proper treatment, the captain must lodge with the Consular officer the amount considered necessary for his treatment and return journey home.

If there is no Consular officer the captain must place him in a hospital, or some other place where he can be properly treated, and leave the said sum of money there. A seaman who is landed has no claim in any case to his wages and expenses of treatment beyond four months after the time he was landed.

Cf. B. 57, 58, F. 262, 263, G. (1872) 48, 49, H. 423—427, N. 32, P. 1468—1472 R. 990, 992, S. 718, 719, Sw. 64, E. 77.

M. and P. 208, 209, 221; Macl. 215, 218, 247; News. §§ 27, 30.

538. If a seaman is wounded or contracts disease through his own fault, or whilst on shore without leave, he is treated at his own expense, but the captain must advance the necessary funds in the first instance. If it is necessary to land him, the captain makes arrangements for his treatment and return home as appointed in the preceding article,

reserving his right to be repaid, and the seaman only receives wages for the time he has actually served.

Cf. B. 59, F. 264, G. (1872) 50, H. 428, N. 32, P. 1473, R. 963, S. 718, 719, Sw. 65, E. 79.

M. and P. 208, 209, 221; Macl. 216, 247; News. §§ 27, 31.

539. In the case of a seaman dying during a voyage:—

(1.) If shipped by the month, his wages are due to his legal representatives up to the date of his death.

(2.) If shipped by the run, half his pay is due if he dies on the voyage out, or at the port of destination; the whole, if he dies when homeward bound.

(3.) If shipped on a share in the profits or freight, his entire share is due if he dies after the voyage has begun.

If a seaman is killed in defending his ship, the whole of his wages are due if the vessel arrives safely.

B. 60, F. 263 (Id.), G. (1872) 51--53, H. 431, N. 32, P. 1476, R. 992, 993 Diff., S. 720, 721, Sw., 32, 66. E. 80, Id.

M. and P. 208, 209, 213, 221, 235, 236; Macl. 218, 259; News. §§ 27, 31.

540. If a seaman is captured with his ship and made a prisoner, he has a right to his wages up to the date of his capture.

If he is captured and made a prisoner whilst on ship's duty either afloat or ashore, he has a right to his full wages up to the date when his service should have terminated.

The cargo contributes to the payment, if the duty was in its interest also.

B. 61, F. 266—269, H. 432—435. P. 1477—1480, S. 721, E. 81, 83. Most of the earlier Codes contain provisions as to ransom of seamen taken prisoners.

M. and P. 223; Macl. 222.

541. If the ship is sold during the time for which the seamen are engaged, they have a right to be sent back to their homes at the ship's expense, and to retain their wages.

B. 62, F. 270, G. (1872) 58, 67, 71, Sw. 60, R. 994.

M. and P. 196, 210, 211, 233, 242; Macl. 221; News. § 29. *Beale & Thompson*, 4 East, 546.

542. A captain may at any time discharge a seaman before his engagement terminates, and is under no obligation to prove that he has done anything wrong, but he must give

him his discharge and provide him with means of returning home, or get him a berth on board a homeward bound vessel.

A seaman who is discharged without proper grounds has a right to compensation, in addition to payment for his services actually rendered.

If discharged at the place where he shipped, and before the ship sails, the compensation is fixed at a month's wages; if discharged after the ship has sailed, or at a different port within the realm, or other than that at which he shipped, the compensation amounts to 40 days' pay. If discharged elsewhere in Europe, or on the Mediterranean Coasts of Asia or Africa, or in the Black Sea, the Suez Canal, or the Red Sea, the compensation amounts to two months' pay, and if discharged in any other place to four months.

The captain cannot in any of the above cases recover from the owners of the ship compensation paid by him, unless the man has been discharged with their consent. There is no claim for compensation if the seaman is dismissed before the muster roll is made up.

B. 62, F. 270, G. (1872) 104—105, H. 344, 436—439, P. 1483, 1484, R. 995, 999, S. 704—706, Sw. 69, E. 87.

M. and P. 210, 211, 217, 241; Macl. 212, 216, 250, 251; News. §§ 27, 29, 30.

543. The crew have a right to be victualled on board until their wages or share in the profits are paid in full.

Macl. 245.

544. Unless it has been otherwise agreed, the crews, on the termination of their engagement, must continue to serve until the ship is in safety, discharged, and cleared. During this time they are entitled to their keep and pay.

If the vessel sails on a new voyage whilst in quarantine, a man who does not wish to ship for it has a right to be landed at the quarantine station and paid until clear.

The expenses of keeping him and of the quarantine and lazzaretto are a charge on the ship.

G. (1872) 55, H. 446—448, P. 1491—1493.

M. and P. 227.

545. The wages and perquisites [*emolumenti*] of seamen cannot be assigned or sequestrated, except for legally-established claims for sustenance, or for debts due to the ship herself, arising out of service on board her. In the former case, the amount of wages or perquisites sequestrated must not exceed one-third of the whole.

[*Cf.*, for this provision, the Law of 14th April, 1864 (*Pensioni degli Impiegati Civili*), Arts. 36 and 45, as referred to by D'Ettore and De Sio, in their Edition of the Code of Commerce, 1882. —ED.]

H. 452.

M.S.A. 1854, §§ 182, 214, 233, 234; M.S.A. 1862, § 18; C. L. P. Act, 1854, § 61; 33 and 34 Vict., cc. 30, 63; M. and P., 194, 197; Macl., 212; News. § 28.

546. The enactments concerning the pay and treatment of seamen apply to the captain or master and to the officers, and likewise to every other member of the crew.

B. 64, F. 272, G. (1872) 2, 3, H. 394–452, P. 1440—1497, Sw. 50, 72; E. 65—87.

M. and P., 86, 124; News, § 70; M.S.A., 1854, § 2.

F. W. RAIKES.

V.—THE LATE PROF. TASWELL-LANGMEAD'S "ENGLISH CONSTITUTIONAL HISTORY."

THE publication of the third edition of so well-known a work as the *English Constitutional History** by the late Professor Taswell-Langmead is necessarily to so great an extent a Memorial to the author, that I think I may be excused for taking advantage of it to put on record a few thoughts of my own concerning the work and its author.

In the few words which I was able to devote to the subject in the Preface to this new edition, I was chiefly

* *English Constitutional History from the Teutonic Conquest to the Present Time.* By the late T. P. TASWELL-LANGMEAD, B.C.L. 3rd Ed. Revised, with Notes and Appendices. By C. H. E. CARMICHAEL, M.A. Stevens and Haynes. 1886.

concerned with giving some account of the reasons which prevailed with me to accept the responsibility of the third edition. In such an undertaking there cannot but be a mixture of feelings, satisfaction at the prospect of doing what lies in one's power to keep green the memory of a valued friend; dissatisfaction with oneself for the little that one feels able to do.

And through it all there must run the undercurrent of regret that one can no longer talk over points with the author, as in the olden time, and the consequent doubt how far one is doing him justice. It is so possible that on some given question he might have altered his views, with an altered state of facts before him. It is even possible that one's own arguments might have seemed of weight to him, and that he would at least have given them a place in his notes. I think, on the whole, when it has appeared to me probable that Langmead would have taken a given argument into consideration, I have generally myself brought it forward, either in my own name, if convinced by it, or by citation of the published opinions of writers whose views have seemed to me at least worthy of careful consideration. There are, as might naturally be expected in a work covering the whole field of English History, some few points on which my own convictions differ from those of the author. But my duty to him, as I conceived it, was to leave his views untouched, and only to express my dissent where it might be necessary in order to deliver my soul. Every now and then it will be found that I have spoken, and, in so doing, *liberavi animam meam.* This cannot, I think, do any injury to the life-work of my old friend, while it has enabled me to do my own part in it with greater freedom.

It will no doubt be felt by many readers of the new edition that there were a good many questions on which notes or Appendices might have been added, and I think I may say that I felt this quite as strongly as anyone. In a certain

sense, such a book as Taswell-Langmead's *History* is a book upon which an Editor might have gone on annotating and writing Appendices for several years. But this is practically impossible. The public will not wait for ever. It is therefore inevitable that the work of editing should be done under a certain pressure, and this pressure is partly for good as well as partly for evil. Whether for good or for evil, however, it is one of the necessary conditions of such work, and I simply accept it as such, hoping that the readers of the new edition will bear it in mind when inclined to hurl anathemas at the Editor for not going into some question which they may happen to want to see treated in the book.

It always seemed to me that the early part of Langmead's *History* was the part of his book in which he had least fully discussed the questions which lie at the root of all English History. To have altered this, however, would have been, substantially, to have presented a history of my own under Langmead's name, and that was quite foreign to my conception of the Editorial function. I have therefore contented myself, in the pre-Norman portion of the book, with throwing out suggestions by way of note or reference, serving to indicate to the student a line of thought or of reading which, as I hope, he may be induced to follow out for himself. And that, indeed, has generally been my aim.

No doubt it is one thing to suggest, and another for one's suggestions to be carried out. But except in so far as he may express, from time to time, views of his own, the Editor of a work on History can do little more than point out roads to some branch or branches of Historical knowledge.

There are many more helps to knowledge in these days than there were even when Taswell-Langmead began his book. But the very increase in their number is apt to lead to some confusion in the mind of the student, who may

often be in doubt which path will lead him straightest to his goal. Taking that goal to be an accurate acquaintance with the History of the Institutions under which we live, I have endeavoured to set in relief a fair variety of modern illustrations of English History, derived, in some instances at least, from sources which it might be assumed would probably be missed by one left to pursue, unaided, the ordinary routine of Historical reading. In Professorial Lectures, no doubt, the student may often be led, as both Langmead and I were led, to courses of reading which we might not otherwise have undertaken. But perhaps, quite as often as not, it was a chance word, or a seemingly incidental reference which set us on a track that proved fertile in illustration of the subject. And my hope is that some of the various references which I have given may act as such chance words, to guide the reader of Taswell-Langmead's book to some author whom he shall consult with profit, and to whose pages he might not otherwise have been led.

Many questions are probably coming into prominence which had scarcely come to the surface when Taswell-Langmead commenced his *History*. It has not been possible to do more than mention a few of these, and it has scarcely been possible to treat any one of them in more than outline. Time and space alike were wanting for a fuller treatment, and it must be remembered that in not a a few of what seem to be coming questions, opinion is still in a very unsettled condition. Pages might have been filled with opposing views, each set, perhaps, looking unassailably strong until the opposite forces are marshalled. Federation, Disintegration, the so-called Nationalisation of Land,—these and many others are topics, so to speak, in the air. But the time has not yet come to pass a judgment upon them, and it seemed best simply to note recently published expressions of the views of different minds on

some points of Constitutional importance, and to leave problems which are awaiting solution to be dealt with in some future edition by an Editor of the future.

That we are, in some material respects, entering on a new phase of national life can hardly be doubted. The transition character of the present period has been seen and pointed out by writers on the other side of the Channel, and writers on this side have not been slow in following suit.

M. Glasson, in the detailed and patient investigation which has found expression in his valuable *Histoire du Droit et des Institutions Politiques de l'Angleterre*, to which I have so frequently referred:—Madame Adam, in her Political Review of the state of Europe in the *Revue Nouvelle*:—our own Historian of *Ancient Law*, and of the *Early History of Institutions*, Sir Henry Sumner Maine, in his latest work on *Popular Government*. Each of these, with others, too, whom we have not space or time to recall,—warns us that the present times are times of transition, times of difficulty. The Old Order is changing. It is giving place to a New Order, but we cannot yet decide what that will be. Some think they can tell us. They say it is the "advancing tide of Democracy," or some such phrase. The word Democracy is much in use just now, but it certainly seems to be used by different writers in very different senses. To one school it is of unmixed evil omen, little short of the Great Nothing which the Nihilist is credited with desiring to set up. To another school it is a word containing within itself the future well-being of the Human Race. We shall some day perhaps come to the conclusion that neither school is absolutely right.

In a certain sense, of course, it may be said that the English Constitution is largely Democratic. The same has been said of the Constitution of the Christian Church.

In both cases there is a certain truth in the statement. But it is equally true to say that the English Constitution is Monarchical, and it is equally true to say the same of the Christian Church. I have heard of the Constitution of the Church being likened to the Constitution of the United States, and the new edition of Langmead's book shews that there have been American writers who have seen a Monarchical principle in the American Constitution.

For the present, therefore, it seems wisest to wait and let the discussion proceed, without attempting to pass any judgment as to the probable solution of the undoubtedly complicated problems which we have to face. It may seem to many, as it in fact seems to me, that Langmead took a somewhat too optimistic view of the Constitutional Future of the United Kingdom. But it is not therefore necessary to range oneself on the side of Pessimism, and I have desired to send forth the third edition of Langmead's book in a spirit equally removed from excessive Optimism, or unwarranted Pessimism. I have not sought to disguise the gravity, which, indeed, I fully admit, of the problems before us. But I have sought to balance one set of opinions by its opposite, in order that the reader may have both put before him, and form his own judgment. If anything, I have perhaps sought to qualify what has sometimes seemed to me an excess in the direction of Pessimism.

No doubt, as M. Glasson remarks in his striking concluding chapter,* the reign of her present Majesty practically opened a new phase of English History. It is, as he says, at once the close of one age and the dawn of a new one, of which it is yet impossible to forecast the results. The Spirit of Reform, he sees, has penetrated deeply into the whole network of our Political no less than

* *Hist. du Dr. et des Inst. Pol. de l'Angleterre.* Vol. VI. Conclusion.

of our Social Institutions, and this Spirit of Reform is ceaselessly at work. But the method, he thinks, and many will think with him, has not changed: the English, he believes, remain faithful to the system which has given them stable Institutions, Liberty at Home, Greatness abroad. This is high praise: let us hope that the Future may shew we deserve it. M. Glasson calls the reign of her present Majesty, "le long et beau règne de Victoria." Yet he does not dissemble from himself or from his readers the difficulties which await its latter days.

He sees, as he believes, a House of Commons aiming at supremacy. Practically, to a very considerable extent, it might even be said that the desired supremacy, or something very like it, has already been attained. Yet to M. Glasson, writing his last chapter in 1883, it did not seem that the existence of the House of Lords was immediately threatened. It may perhaps be suggested that the position of the Second Chamber is stronger now than it was then. Remotely, M. Glasson did believe the existence of the House of Lords to be threatened. It seems not unlikely that the consideration which has been forced upon many minds of late, of the ease with which a Political mine may be sprung upon the Nation in the House of Commons, will give no little force to the arguments in favour of the maintenance of our existing Bi-cameral System. There is much, no doubt, that seems attractive in the simplicity of the Single Chamber System, of which Mr. Sheldon Amos urges the advantages in his interesting volume on the *Science of Politics*.* But the ideal beauty of this simplicity vanishes, I cannot but think, before the practical objections to it which have been strongly, even forcibly, urged upon us by recent events. A single Chamber may well be surprised into a leap in the dark which two Chambers will rarely, if ever, unite in taking.

* International Scientific Series. Lond. 1883.

Practically, both our Bi-cameral System and our Monarchical System have served the purposes of other nations, under slightly different names. The President of the United States, Sir Henry Maine shews us in the Essay on the Constitution of the United States in his *Popular Government*, "has in various degrees, a number of powers which those who know something of Kingship in its general history recognise at once as peculiarly associated with it and with no other institution." And in the same way he tells us that "the Commonwealth founded in America was only called a Republic because it had no hereditary King, and it had no hereditary King because there were no means of having one." The desire was not altogether wanting, as I have shewn in one of the Appendices to Langmead's book. It is enough for the present purpose to point out, as Sir Henry Maine does point out, that the founders of the United States had "no quarrel with Kings or Parliaments as such." It is enough to shew, as Mr. Beach Lawrence has reminded us, that Constitutions granted under Charles II. remained in force in more than one State far into the present century. It is enough if we see that our Constitutional system has been able to adapt itself to altered surroundings, and to new worlds. We can admit with Madame Adam* that the elements of olden revolutions and new transformations are at work among us in Old England. We can admit with M. Glasson that we stand on the threshold of a new age. What those new transformations and that new age may bring us we know not.

Still the Angel of Byzantium is keeping his lonely watch on the mystical tower by the Golden Horn. He looks to the North, and he looks to the South, and he looks to the West, and he looks to the East. But not yet are his eyes gladdened with the streak of dawn in the Eastern sky.

* *Nouvelle Revue.* Paris. March-April, 1886.

that shall tell him his watch is over. Till then, faint and weary, he turns to his watch again. The Night is still dark, and the Dawn is not yet. "Watchman, what of the night?"

"When Eastern and Western strife
Are swept into darkness away,
And their fifteen hundred years of life,
With hatred and falsehood and tyranny rife,
Like the Crescent of yesterday;
Then on my mystical tower
Glances the sunrise: till then—
Rapt in His Presence which melts in its power
Ages of time to a single hour—
I turn to my watch again."

(*Historical Studies*, by Herman Merivale.)

C. H. E. CARMICHAEL.

Quarterly Notes.

The International Prisons Congress, Rome.

Among the many interesting questions in Penal Law and Prison Reform treated at the recent International Congress in Rome, we may briefly indicate the following as deserving of special attention.

In the First Section, which embraced points of Theory as well as of Practice, we note the raising of a point which has often occurred to ourselves, in the midst of the dull uniformity of ordinary systems of sentencing.

Question II. in the First Section was to this effect:—"Might not, in the cases of certain offences (*délits*), the punishment of imprisonment or detention be usefully replaced by other punishments restricting liberty, such as work in a

Penal Establishment without detention, or temporary interdiction from a given locality, or even, in the case of a slight offence (*faute légère*), by admonition?"

Question III. in the same Section touches a point evidently identical with one not unfrequently mooted among ourselves, when circumstances happen to draw our attention to what may appear a startling inequality of sentences. "What latitude ought to be allowed by Law to the Judge in fixing the punishment (*peine*)?"

Question IV. is one which, in substance, has often been discussed, at the meetings of the Social Science Association and elsewhere. "What Legislative measures can be adopted in order the better to reach habitual receivers of stolen goods (*recéleurs*), and other persons who profit by, or incite to, crime?"

Question V. is one which must often present itself to Chairmen of Quarter Sessions, Stipendiary Magistrates and others. "How far ought the legal responsibility of parents and guardians to extend in the case of offences by minors (*enfants*)?"

Question VI. opens a very important class of difficulties, that of Reformatories and Educational Institutions for children who would probably, if treated by the unsuitable punishment of imprisonment, develop into habitual criminals. "What powers ought to be given to the Judicature for sending young offenders to Public Educational Institutions or Reformatories, in cases where such offenders must either be acquitted as under the age of discernment, or must be condemned to some punishment restrictive of liberty?"

In the Second Section, where questions connected with the construction and management of Prisons were mainly dealt with, we note, as of general interest, the following important questions:—

"III. Ought not punishments restrictive of liberty to be arranged, which should be more suitable than those at

present in operation for agricultural countries, or for rural populations unaccustomed to industrial labour?"

There is obviously little or no use in attempting to set a man accustomed only to follow the plough to work at carpentering or tailoring, and the same, of course, is true of the converse case. We have long been of opinion that much greater elasticity is needed in Prison arrangements as to the occupation of prisoners, and that all purely useless occupations, such as oakum picking, ought to be erased from the list altogether.

Question IV. in the Second Section is also one of great general interest. "The utility or otherwise of Prison Councils or Committees of Visitors (*Conseils ou Commissions de Surveillance*) or similar bodies, and the powers which the Law should allow them."

Our "Visiting Justices," it is to be feared, are able to do but little, and that little, even though honestly done, can scarcely produce any adequate effect. As far as we understand the extent of the powers of Visiting Justices, they amount to little more than a recognition of the fact that there ought to be some power of visiting prisons in other than official hands, but the recognition given is of the slightest, and the heed paid to remonstrances or recommendations by Visiting Justices may be, and perhaps too generally is, *nil*.

Question V. is of the highest practical importance for administrative purposes. "On what principles ought the diet of prisoners to be based, from the hygienic and the penal points of view?" The answer to this question clearly involves many considerations, but they are in the forefront of practical value. On this head also we believe the present regulations in the United Kingdom to be greatly wanting in elasticity.

A dietary which may be quite fairly suitable to the ordinary occupants of a Prison, viz., what are called the

Criminal classes, may conceivably be perfectly unsuitable to a case which has nothing but the name in common with them. To take a man straight from the ordinary diet of the English gentleman, and give him "skilly and toke," which he probably can scarcely get through from repugnance, does not seem to us a fair construction of the rights of Society. The right to punish should be exercised, as Opie is said to have answered when asked how he mixed his colours,—"With brains!" A diet of suet pudding, in a cold cell, is not punishment with brains for any other than the actually Criminal classes, whose food or shelter previously to incarceration may be assumed not to have been choice. But even in their case, brains should also be brought to bear on the vital question of diet.

Question VIII. raises the important question of the "Encouragements which may be given to prisoners in the interests of sound discipline, and how far the prisoner may be allowed to dispose freely of his gains (*pécule*)." This refers in part, of course, to the proceeds of prison labour, and the share to be allowed the prisoner. Such share, we are inclined to think, would most naturally and properly be fixed relatively to the point at which prison labour may become a source of profit to the State, and the prisoner's *peculium* should arise from such profit. The earlier portion of the question seems to touch the allowance of marks, or some such system tending to diminish the length of time to be served in prison. Any system of marks, however, requires close watching, to guard against arbitrary loss of marks, an evil which, it is believed, is not unknown in English prison management.

Questions IX. and X., completing the programme of the Second Section, deal with Prison Instruction, secular and religious, points of considerable importance from the reforming side of Prison arrangements.

In the Third Section the questions proposed dealt with

the following subjects amongst others. "I. The desirableness of temporary homes (*refuges*) for discharged prisoners." How to deal with those who are discharged from prison is often almost a more difficult question than how to deal with the same persons while in prison. We hope that we may be able in a future number to report what were the conclusions arrived at by the Congress on these and other interesting questions, such as the visits to prisoners by Members of Prisoners' Aid Associations and other such bodies; the regular interchange between States of their several Judicial Statistics, &c.

The meaning of the question on Extradition in the Third Section we confess is not clear to us, and we must reserve it for discussion, when in possession of fuller details. It ran thus:—"Should there not be introduced into Extradition Treaties, a clause relative to the exchange of certain categories of persons convicted under the Common Law, determined by such Treaties?" All we can now do is to draw attention to the importance and value of such gatherings as the International Prisons Congress.

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Among the features of interest presented by the Prisons Congress at Rome, apart from the discussion of the Paper of Questions, we would specially name the Exhibition of Miniature Cells, arranged according to the systems in use in the several countries represented, and the Exhibition of Prison Industries. In both Exhibitions, Italy was well and copiously represented, as might be expected from the well-known energy of the Councillor of State Beltrani-Scalia, so long at the head of the Prison Administration. It seems worth while to note the number of different industries carried on in Italian Prisons. Thus Procida sent up textiles, metal work, &c.; Pallanza, hats; Lecce, carpentry; Rome itself, specimens of typography. We may

mention, in this latter connection, that the printing of the Review so long and ably edited by Comm. Beltrani-Scalia, the *Rivista di Discipline Carcerarie*, is printed by means of prison labour, as are also the valuable volumes of Prison Statistics, noticed in our November issue. Hungary, Denmark, Sweden, Norway, Switzerland, France, Belgium, and other countries all contributed to the variety of the Exhibition.

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The Exhibition of Cells had a historic as well as a present interest;—the *Piombi* of Venice, which the tourist visits, not without a shudder, being represented, as well as the modern "elegant and commodious" Belgian and Swedish cells, to give them the descriptive epithets applied in the official account, obligingly furnished by Sig. Levi, the Press representative on the Executive Committee of the Congress. Probably some of the members of the Congress doubted whether cells ought to be either "elegant" or "commodious," but none can have doubted that such horrors as those of the *Piombi* only deserve to be improved off the face of the earth. Types of cell, old as well as new, were given to shew the progress made down to date throughout Italy, at Milan, in Venice itself, in Rome, at Pallanza, looking out over the Borromean bay of the Lago Maggiore, and at other centres. We record with pleasure the reforms of Pope Clement XI., as shewn in the old cells of S. Michele in Rome, constructed in 1703.

To Clement XI. belongs the honour, in Italy certainly, and probably throughout Europe, of having taken the first step towards the institution of the Cellular system. Thus, as the official account has it, "Civilisation took the place of Barbarism."

The cubicle of Tivoli represents the arrangements adopted for young offenders, who work in common during the day.

In the English, as in some other cells, the mode of lighting for night is by gas. The Dutch cell, however, is lit by electric light.

The general arrangements of this most interesting Exhibition were ably carried out by the well-known Italian engineer, Sig. Mars, to whose ability we have drawn attention in former numbers of this *Review*, in connection with the remarkable establishment known as the Penal Colony of the Tre Fontane, where the excellent work of the drainage of the Campagna is being carried out under the superintendence of the Trappist Fathers.

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International Congress of Criminal Anthropology.

In close and sympathetic connection with the International Prisons Congress in Rome there was held, contemporaneously, an International Congress of Criminal Anthropology.

Among the subjects of discussion, which were divided into two Sections, broadly divisible as the Scientific, or Theoretical, and the Practical, we may single out the following :—

In Sect. I., Quest. 1 : " What categories of offenders should be laid down, and by what essential characteristics, physical or psychical, can they be distinguished ? " On this Question, the distinguished Italian Penalists, Lombroso and Ferri, were among the Reporters.

Quest. 2 broached the subject, " Is there a general Bio-pathological character which predisposes to crime ? If so, enquire into its different origins and developments."

Quest. 6 as to the simulation of madness reminds us of the difficulties experienced with " cranks " in an American *cause célèbre*.

The last question, or rather Thesis, of Sect. I. opens a prospect of a result of permanent interest arising from the

Congress, viz., the Foundation of an Italian Museum of Criminal Anthropology. With a large and influential body of Jurists and Prison Directors accustomed to devote much consideration to these subjects, such a Museum could not fail to be well supported, and to provide matter for study to visitors from other lands, to whom Italy is a land of Culture in Science as well as in Art. In the opening Question of the Second Section, the relations of the theories of Criminal Anthropology to the Italian Penal Code were considered. Quest. 3 was the very important one of the place of the medical expert in criminal trials, and Quest. 5 the no less important one, How to combat *Récidive*. Quest. 6, Political Crime (*Délit Politique*), opened a problem of perpetual recurrence in connection with Extradition, and was treated by two Reporters, Laschi and Lombroso. We are inclined to think that this Question, with the relative Reports and Discussion, might advantageously be printed separately from the Report of the Congress as a whole, and sent round to the various European Governments, as well as to Professors and others interested in International as in Penal Law.

The last Question in the Second Section was one of considerable interest and closely allied to the subject of the Prisons Congress, viz., whether, and if so to what extent, admission to Penal Institutions (*établissements pénitentiaires*) should be allowed to persons who make a study of Penal Law. This Question had two Reporters, Tarde and Ferri, the latter being, with Lombroso, a leading member of a Modern School among Italian Penalists. As regards Italy, the answer has practically already been given in the affirmative. We have before now cited from the *Rivista Penale* and *Rivista di Discipline Carcerarie* facts shewing that Convict Prisons, as well as Agricultural Colonies such as that of the Tre Fontane, may be visited by Professors with their classes, and by persons known to the

Ministry of the Interior as being interested in Penal Law and Administration.

It appears to us that the knowledge of a liability to such visits from persons outside the official circle would be likely to exercise a beneficial influence in various ways. It would almost certainly tend to keep the local officials from falling into a possible somnolent routine between the visits of the appointed Commissioners or Visitors, little as those visits may themselves accomplish. For Industrial Schools, Penal Colonies, Reformatories, and the like, where really great works are carried on, as at the Tre Fontane, Pianosa, and other places, the visits of outsiders must tend to make the good work done more widely known and appreciated. Among the excursions provided for the members of the Prisons Congress in Rome, not the least interesting, assuredly, were those to the Agricultural Colonies of the Tuscan Archipelago and the Island of Sardinia.

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Criminal Law in Cyprus.

The position of those who administer the Law in Cyprus is in many respects far from an easy one. They necessarily come to the work with little or no special knowledge of the Ottoman Code which they have to administer, and on some points in that Code we do not ourselves see how they act at all, having regard to the generally accepted view of the nature of Criminal Law. We do not, for instance, see how the Death Penalty, enjoined in certain cases under the Ottoman Code, could be properly inflicted by the English Judges in Cyprus, or how they could exercise the Sovereign prerogative of mercy and grant a reprieve. If it be conceded that the appointment of a Judicature is itself an exercise of the Sovereign power, it is difficult to see on what principle the English Judges in Cyprus hold their appointments under the British Crown instead of holding

them from the Sublime Porte. For Cyprus, we apprehend, is still Ottoman soil. It is still, by our own confession, governed by Ottoman Law, yet the Administrators of that Law are appointed by us and not by the Porte.

It appears to us that on this shewing it still belongs to the Porte, and to the Porte alone, to condemn to death, or to commute the Death penalty. These difficulties, it may be said, are theoretical. Nevertheless, they might obviously arise at any moment, and cause no small amount of Diplomatic tension. Among more strictly Political, and yet certainly practical, everyday questions which might also arise we think that the national character of natives of Cyprus affords room for much discussion. They are, we believe, not British subjects. Strictly speaking, they ought, when travelling, to have Ottoman, not British, Passports. It is possible, perhaps, that Levantine practice might be patient of the construction that they would be entitled to a British Consular *tezkeré*, as persons under British protection. But that would only apply in the Levant.

For these and other nice questions in International Law and Diplomacy, however, our Judges in Cyprus are not personally answerable. They are doing the duty which they were sent out to do, manfully facing all the difficulties they may meet. Not the least of these is that of the Penal Code which they administer. To facilitate the work of his brother Judges, in this respect, the President of the District Court, Larnaca, Mr. C. G. Walpole, M.A., whose *Rubric of the Common Law* was noticed in this *Review*, while he was yet at the English Bar, has drawn up a very useful *Alphabetical Synopsis* of the *Turkish Criminal Code* (printed at the *Cyprus Herald* Office, Limassol), classified in conformity with the Cyprus Courts of Justice Order, 1882. It is a pity, we think, that Mr. Walpole should have substituted the ordinary English epithet "Turkish" for the official "Ottoman," which we

have found employed in all the French versions of the Codes of the Ottoman Empire which we have seen. Moreover, it is the special connotation of the ruling Turks of the Ottoman Empire that they are the Ottoman Turks, so that the epithet is historically more accurate than one which is equally applicable to other Turkish races, not necessarily subject to the rule of the Porte. Mr. Walpole gives us, in his several tables, a clear *conspectus* of the offences under the Code, with their relative punishments and compensations, and the number of the Articles of the Code in which the offences are specified. To the members of the English Judicature in Cyprus, Mr. Walpole's *Synopsis* must be a most useful *vade mecum*. For the student of Comparative Jurisprudence it has also a special value as enabling him readily to contrast Ottoman Penal Law with the systems of the Western Nations, and it cannot but materially lighten the labours of any Commission which may hereafter be empowered to draft Codes for such portions of the Ottoman Empire as seem destined to come more or less directly under the influence of British Rule, whether it be called an Administration, or an Occupation, or under whatsoever name it may be veiled. While we ourselves think that more straightforward courses would give less trouble, both now and in the future, we have yet to take things in a measure as we find them, and we are glad that Mr. Walpole, at least, has shewn us that our Judges in Cyprus may do good service not only to the population among whom they administer the Law, but also to the study of Comparative Jurisprudence.

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The Draft Penal Code of the Transkei.

Our Colonial contemporary, the *Cape Law Journal* (Grahamstown), the organ of the Incorporated Law Society of the Cape of Good Hope, in its number for June, 1885,

gives an interesting notice of the Code with which it is proposed to endow the Transkei.

It may be asked, *in limine*, why such Codification should be confined to the Transkei. Our Grahamstown brother objects to such partial Codification, and desires that its applicability should be taken into consideration for the whole Colony. "We are all," says the *Cape Law Journal*, "subjects of Her Majesty the Queen, and may very naturally object to any difference in the administration of *criminal* justice in the various divisions of this Colony." The variations which the Transkei Code would introduce in practice are not, it would seem, at all inconsiderable. They embrace the liability of accused persons to be examined "either for the prosecution or the defence, upon his or her trial for such offence, and the wife or husband of every such accused person shall be a competent witness for or against him or her upon such trial." The desirableness of this change is still a vexed question among Jurists, as the *Journal* remarks. There seems considerable force in the argument adduced that if it is to become law in the Transkei, "it must, in common justice, become law" also throughout the Cape Colony. Whether the change itself is desirable or not is another question. The proposed Code is intended to apply to all races within the Territories, while yet it contains not a few provisions solely applicable to the indigenous races. It might have been better to have frankly separated off those portions from the rest, the purely native customs of Spoor law, witchcraft, &c., being easily distinguishable.

The general basis of the Transkei Draft Code is stated to be the Report of the Commission on Native Laws, which sat from 1880 to 1883, when it gave in its Report. The Commission, in turn, were themselves much indebted for the form into which they threw their recommendations, to the Indian Penal Code of Sir James Stephen. There is no

doubt that the Commissioners did their work carefully, and that the Report embodying the result of their labours is a most valuable document. But the very respect felt for the Commissioners may itself endanger the good of their work, if it be hastily made law without being adequately discussed. This is the main danger pointed out by the *Cape Law Journal*, and it is one which we hope the Cape Legislature will have deemed worthy of consideration. We shall watch with no little interest the progress of events in the matter of the Transkei Code. At a time when Colonial industrial products are receiving such general attention, some time and thought may well be given to Colonial Legislation.

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Home and Foreign Constitutional Problems.

Some considerations arising out of the study of the valuable *Constitutions Européennes* of M. Demombynes, and the *Constitutions Modernes* of M. F. R. Dareste, noticed in our current issue, seem to deserve separate treatment in this *Review*.

Taking the State as the unit, we are led to enquire what are the tendencies which appear to be dominant in the principal countries of the Old World? Everywhere are observable signs of a Democratic uprising. In some countries, from the nature of things, the process is less marked, because more gradual, than in others; but its presence is none the less felt because the forces at work are latent. The very devices resorted to for its repression supply the most cogent evidence of its vitality. The field for investigation afforded by these phenomena to the historian, the statesman, the philosopher, nay, to every citizen who is solicitous for the well-being and advancement of his Fatherland should be neglected by none. If properly studied, and its force and direction accurately estimated,

the rise of Democracy may not be found necessarily to inspire feelings akin to apprehension or mistrust in the minds of the far-seeing. They will recognise that a great transformation may be fraught with violence and confusion, only if it be unduly checked, and they will consequently employ their energies principally in softening the transition and minimising its concomitant friction.

At the present moment, Russia, Turkey, and Montenegro appear to be the only European States which do not possess a Representative Chamber. The recent acknowledgment of the independence of Montenegro, and the critical position of the Ottoman Empire, at least in its European relations, sufficiently explain the anomaly; more especially if the social conditions of the several nations are borne in mind. Furthermore, we must not leave out of account the Ottoman Constitution of 1876, which, however short-lived, testifies to the nature of the guarantee which the Sublime Porte thought it essential to offer, in order, if possible, to retain the place which it had gained in 1856 in the Councils of Europe. As regards Russia—at present the stronghold of despotism—the recent foundation of Provincial Councils and District Boards may be regarded as possibly heralding reforms which may later on confer upon the people some measure of Parliamentary Representation. Everywhere else, a Parliament exists, and the suffrage—in those countries where it is not yet universal—is being constantly enlarged by a lowering of the Franchise.

Were we to omit all reference to Local Self-Government, we might be thought indifferent to one of the questions of the day. Liberals and Conservatives with one accord proclaim its prominence in their platform. "It is," as the author of the *Reign of Law* aptly observes, "a stick which both parties wish to pick up to beat the dog with. Each claims the monopoly of it as a means of opposing its enemies in the political arena." Politicians tell us,

that it is the appropriate and inevitable sequel to the revolution which has been effected in the Electoral power. The welfare and contentment of the whole population is to be secured by it. Temperance reform, reform of taxation and the great social questions which are pressing for solution, all await and depend upon the preliminary creation and existence of a satisfactory Local Authority. Local government, we are told, is the instrument whereby alone we can hope effectually to cope with the destitution, the misery, the disease, and the crime, which are still the great blots on our Civilisation. It is the panacea which is to bring health, and comfort, means of education, and opportunities for enjoyment, to the poor in our midst. To it we are to look to afford a fuller scope for restless energies in various parts of the country, to imbue local politicians and local public men with a feeling of responsibility by according to them an adequate share in the affairs of the country. If we are to maintain the authority, the prestige, the influence for good of the House of Commons, we must, it is alleged, decentralise. We must relieve the House of its overgrown power and of the pressure of work which it cannot perform. Future legislation must be centrifugal rather than centripetal.

Democracy is not safe, and cannot be trusted, when all its power is concentrated in one highly centralised body. The extension and completion of our present system of Local Government should therefore be the first duty and chief obligation of the first Parliament elected under the new Franchise.

Whether or not the reform which has been carried out in our Electorate will be as rich in results as its advocates would have us believe, is a matter upon which we are not now called upon to express an opinion. But anyone who has given however slight attention to the subject must feel that our method of Local Government is capable

of great improvement. Our local institutions have developed spontaneously, like our Political Constitution, and both alike are full of anomalies.

In local affairs, as in our political organisation, the general type of Government is Representative. But take, for instance, the case of County government, which constitutes the most conspicuous exception to the rule of Representative government in local matters. In the County, the governing body consists of the Justices, who are appointed by the Crown on the recommendation of the Lord Lieutenant.

Logically, whatever reasons may exist in favour of the Representative system as regards Central government, and, as regards other local authorities, apply equally to the County. Historically, too, the counties have every claim to an elective government. In Anglo-Saxon times, the system was thoroughly representative. But the fact that County government in the hands of the Justices has not led to any crying abuses, has probably reconciled Englishmen to a system of class government that is wholly foreign to the generality of their Institutions.

As regards the Franchise, the right to vote at Parliamentary elections, and the right to vote for purposes of Local government, alike rest on the possession or occupation of land or houses. No amount of mere funded property, no payment of income tax, will confer a vote.

As regards taxation, however, there is this difference between national taxes and local taxes. The Central Government taxes both real and personal property, while rates fall exclusively on land and houses. This different incidence of burden is important, on account of the question of Treasury subventions for local purposes, and of the further question whether personal property should not be made to contribute to the rates. A large part of local expenditure directly affects and benefits

houses and land. On the other hand, such matters as poor relief, and elementary education, have no connection with local property. It would therefore seem fair that the expenses of such matters should fall, at any rate in part, on the actual income as well as on visible expenditure. Again, at Parliamentary elections there is only one system of voting, whilst the methods of voting at Local elections are various. Another point of contrast is the position of women. At a Parliamentary election a woman cannot vote, neither can she sit as a Member of either House of Parliament. Nevertheless, a woman may exercise all local franchises if in other respects qualified, and may also fill most local offices. But if there be one defect greater than another in our system of Local Government, it is in the confusion and conflict of jurisdiction produced by the present unsystematic distribution of our local authorities. To give a correct and intelligible general view of the various local Institutions which, in the aggregate, make up the system of Local Government in England, is a task which has taxed the abilities of a Gneist to the fullest extent. English Local Government, indeed, can only be called a system on the *lucus à non* principle. There is neither co-ordination, nor subordination, amongst the numerous authorities which regulate our local affairs. Nearly every Public Authority divides the country differently, and with little or no reference to other divisions. Each Authority appears to be unacquainted with the existence, or at least with the work, of the others. Local Government in this country has been fitly described as "a chaos of areas, a chaos of authorities, and a chaos of rates." This state of things results, no doubt, from the apparently inveterate English habit of piecemeal legislation. Special Authorities and Districts have been created for special purposes, as occasion seemed to require. As Society has outgrown existing Institutions, the defects and shortcomings

have been remedied by patchwork. The result is that the country is covered with a perfect jungle of jurisdictions, each presided over by its own Authority. Unfortunately, this overgrowth of Authorities is firmly rooted to the soil by vested interests. Each petty Board or Authority must have its own staff and officers, kept up at the expense of the rate-payers, however unnecessary such a multiplication may be. Confusion and extravagance are the characteristic features of the whole system, and the consequent waste of time, power, and money can scarcely be overestimated. Reform, therefore, appears to be required in several directions. The incidence of local taxation and the mode of exercising the local franchise should be assimilated to that of our Parliamentary Institutions. Much might probably be done to check local extravagance if some such system were adopted as exists in France, where every *Commune*, as well as every *Arrondissement*, and each Department of the Country, publishes its annual budget, showing its financial position and estimating its financial requirements for the coming year. In addition to these changes, it is essential that there should be a simplification of areas, and a consolidation of Authorities. Some area should be chosen as the Local Government unit, and the larger areas should be multiples of that unit. A separate Authority should not be created or maintained for every function that has to be discharged, but, within certain limits, the same Authority should deal with different subjects through separate departments.

So much, then, as regards the evils which exist in our present system, or rather want of system, of Local Government. These, however, are rather matters of administration, and do not touch the question in the abstract. For a consideration of that, we may usefully turn to the Comparative researches of M. Demombynes, where we shall readily discover that the extension of Local

Institutions has its drawbacks as well as its merits, and so take warning of the perils to which a nation is exposed if a policy of decentralisation be carried out too fast or too far. Centralisation is a useful, nay, an indispensable instrument for knitting together the diverse elements which go to make up that agglomeration of powers and interests known as the State. It is the most efficient means for effecting the cohesion of states which are composed of different nationalities. On the other hand, Centralisation, pushed to its extreme limits, simply paralyses all initiative. The constituent factors of the State should therefore not be deprived of the activity and impetus which are born of participation in public life and its responsibilities; in other words, some measure of local independence is essential. But autonomous Local Institutions also have their dangers, for unless there be a Central Authority strong enough to hold them in check and control them, the State runs considerable risk of disintegration. In what exact proportion Local freedom is compatible with National Unity, necessarily depends upon a variety of considerations, such as the history, temperament, social condition, and form of government of each particular nation, and cannot therefore be estimated with mathematical or logical precision. The maintenance, however, of a just equilibrium between the two opposing tendencies is one of the primary duties which statesmen of every country are called upon to discharge, and it is to an unwillingness to profit by the experience of their neighbours, no less than to an imperfect grasp of the surrounding circumstances, that some of their failures in the Past may justly be attributed.

It seems not unworthy of notice that the administration of Justice appears to be most in accordance with the dictates of fairness and humanity amongst those nations which have adopted the institution of Trial by Jury.

The Association for the Reform and Codification of the Law of Nations, Hamburg Conference.

We are carried back to the great days of the Hanseatic League, when we read of "His Magnificence" the Presiding Burgomaster, and the "High Senate" of the Free City of Hamburg, receiving as welcome guests the Members of the Twelfth Conference of the Association for the Reform and Codification of the Law of Nations (*Report of the Twelfth Conference, held at Hamburg*, 1885. Printed for the Association, 33, Chancery Lane. 1886). In this convenient volume, which contains the details of the Hamburg Conference, we find that whilst devoting, as was but natural at such a seat of Maritime Commerce, the main portion of their time to such important Maritime questions as Affreightment, Bills of Lading, &c., the Conference was not oblivious of other matters, also of interest and importance.

Thus, Sir Travers Twiss, D.C.L., Q.C., read a Paper on International Conventions for the Maintenance of Sea Lights, a question closely connected with the well-being of Commerce in all Maritime countries, while Dr. Geffcken, the distinguished German Publicist, read a Paper on Treaties of Guaranty. The important question of Foreign Judgments, which the eminent Italian Jurist, Mancini, has so long had at heart, formed the subject of a Paper by Mr. J. G. Alexander, LL.B., General Secretary of the Association, and the then position of affairs in the Old and New World with regard to International Copyright was reported upon by Mr. C. H. E. Carmichael, M.A., one of the International Secretaries of the Association. In Affreightment and Bills of Lading, Dr. E. E. Wendt naturally took a leading part, both in the way of presenting Reports and taking part in the discussion. A model Bill of Lading, and a set of Rules to be known as the Hamburg Rules of Affreightment, were both adopted, and form no

slight testimony to the practical character of the Hamburg Conference.

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Australian Parliaments and the Australian Bar.

From recent Australian literature, outside the special province of law, we get glimpses of Australian life, shewing how the members of the Legal Profession come to the front in the Parliamentary work of the Colonies as they do in the old country. We have not attempted to reckon how many of the Premiers of the numerous and widely-scattered daughter States which go to make up the Empire of Mr. Froude's *Oceana* are members of the several Colonial Bars. But in the Present, as in the Past, they are certainly a large proportion, perhaps the majority. In the pages of *Once a Month* (W. Inglis & Co.: Melbourne), an excellently illustrated and generally interesting "Magazine for Australasia," as it is entitled, we find corroboration of our view in the memoirs which form a feature of the number for June, 1885, now before us. The biographical sketch of Hon. Adye Douglas, Premier and Chief Secretary of Tasmania, is a good record of a Lawyer Premier, whose practice, we incidentally learn, was "extensive and prosperous." When a new Constitution was framed for Tasmania in 1856, Mr. Douglas, who had previously been a Member of the Legislative Council, was returned to the House of Assembly, as one of the Members for Launceston, and assisted materially, we are told, in laying down the lines and the basis for the new Constitution. That this was "a work of extreme difficulty," as *Once a Month* observes, we need hardly say. That it was carried out by Mr. Douglas in the spirit of Constitutional liberty, we may accept on the assurance of our Melbourne contemporary. Mr. Douglas, it is stated, battled for the widest scope of Franchise then attainable. Besides the work of Constitution building proper, the first two years of the new *régime* saw

the introduction of much new Legislation, in the preparation of which Mr. Douglas bore his share. In 1884 he accepted the task of forming a Ministry, thus fitly crowning the list of his services to the country of his adoption, and placing a Douglas in a position of power much akin to that which his chiefs so long held in Scottish story.

At a recent Meeting of the Royal Colonial Institute, reported in the *Times* (Weekly Edition) for May 14th, we observe that the present Chief Justice of Tasmania, Mr. W. L. Dobson, read a Paper in which he claimed considerable anticipations of the progress of the Mother country for the Colony he was representing. In such matters as Compulsory Education, Land Transfer by Registration of Title, and the Abolition of Imprisonment for Debt, the Chief Justice said that the Tasmanian Parliament had anticipated the Parliament at Westminster. In many respects Parliamentary life at the Antipodes was shewn to reproduce its prototype. Contested elections, Party struggles with their alternations of victory and defeat, are very much the same at Hobart as at Westminster. It must have been with a somewhat curious feeling of being at home that Hon. Adye Douglas, now in the old country, and present at the Meeting, listened to the description by the Chief Justice of Tasmania, to a London audience, of Parliamentary life and work such as he had himself known them in the Garden of the Southern Hemisphere.

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The Law of Marriage in France.

We have already drawn attention in this *Review* to portions of this subject in an article on Naturalisation and Mixed Marriages in France (*Law Magazine and Review*, No. CCLVI., for May, 1885). The subject is a many-sided one, and we desire to recur to it from some points of view to which we have recently been led. We have lately seen

the advance sheets of a Pamphlet to be issued by the Marriage Law Defence Union on the *Experiences of French Jurists and Statesmen on Marriages of Affinity*, as set forth in the Discussions on the Civil Code of 1803 (Vacher and Sons, 2, Parliament Street), and have been thereby induced to a closer study of the Discussions carried on in the Council of State at that date. It appears to us that the report of those Discussions in the *Conférence du Code Civil* (Paris. 1805), edited by a Jurist who himself took part in the drafting of the Code, amply justifies the remarks made by Thiers (*Consulat et Empire*. Paris. 1845) on the large personal share taken in the debates by the First Consul, and his resolution to have every point fully discussed which he thought required full discussion. Public or Parliamentary debates were not to Napoleon's taste. He thought the English system on that head very inconvenient. But in the Council of State, where measures of the highest importance to the nation were debated and drafted, he insisted that the debates should be full and representative. If necessary, he would himself provoke discussion, by remarks or questions which he knew to be calculated to arouse it. And opposing views were, in fact, fully represented.

The First Consul was, of course, not a professed Jurist, but he certainly had a keenness of intellect which enabled him readily to grasp Juridical principles, and he was fully determined to give his country a Code. The First Consul was certainly, we hold, a Statesman, and as such was resolved that Law and Religion must both be established to form the basis of the restored national life, after the cataclysm of the Revolution. The view too often taken of Napoleon I., which regards him as a mere conqueror, or a mere *charlatan*, is clearly superficial, and not borne out by facts. The recent apotheosis, so to speak, of the great, but one-sided, Nestor of French Literature, Victor Hugo, has had a

tendency to revive this view. We therefore repeat our conviction that it is an erroneous view, and very unfair to the memory of a really great ruler of France. The special point brought out in the Pamphlet published by the Marriage Law Defence Union is, of course, the discussion of the expediency or the reverse of permitting marriages of affinity. The debates on this question are full of interest from their very representative character, and deserve to be studied, even if only in order to obtain some insight into the men who drafted the *Code Napoléon*, and the careful manner in which they accomplished the work set before them.

The results arrived at by the French Tribonians are in some respects rather curious, and the mode in which they arrived at the results embodied in the *Code* is sometimes not less curious than unexpected to the reader. That marriage between brothers-in-law and sisters-in-law should have been absolutely forbidden, after long and full debate of all the frequently reiterated *pros* and *cons*, is in itself a striking fact. That marriage between uncle and niece and aunt and nephew should have been forbidden with the admission of permissibility of dispensation, will to many seem a somewhat illogical decision.

With regard to some other aspects of the subject, Mr. Edmond Kelly's *French Law of Marriage* (Stevens and Sons. 1885) provides us with useful texts and instructive Diplomatic Correspondence. Mr. Kelly, who is at once a member of the New York Bar, and Licencié en Droit of the Faculty of Law in Paris, takes up an attitude of antagonism to the view that difficulties have arisen and hardships been inflicted on innocent persons by the relative ease with which marriages of French citizens with aliens, contracted in a foreign country, may be set aside for want of performance of some of the numerous acts and permissions required by the French Law. We think that

Mr. Kelly assumes somewhat too readily that the feeling on this point is confined to the supporters of a particular Charitable Institution in Paris. No doubt the supporters and managers of that Institution have had certain facts brought home to them, and have in consequence felt and spoken strongly on the subject. But the calm and dispassionate Juridical consideration of the question by Sir Travers Twiss, D.C.L., Q.C., on behalf of the Social Science Association, which resulted in a Memorandum on the requirements of the French and Belgian Marriage Laws, adopted both by the Social Science Association and by the two Archbishops, who caused it to be circulated among the Parochial Clergy of England, is a factor of too considerable importance to be overlooked in such a discussion. The question, moreover, was distinctly raised before Sir Travers Twiss as one of practical difficulty experienced by the Chancellor of the Diocese of Manchester. The difficulty of celebrating a marriage between a British subject and a French citizen in England which shall not be open to grave risk of being declared void by the French Courts, if challenged there, is a risk which still exists, though it is to be hoped that both countries will agree in cordial efforts to minimise so far-reaching a calamity, and to remove a constant possibility of misunderstanding between neighbours.

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The Exchequer Rolls of Scotland, and Scottish History in the Fifteenth Century.

The valuable work which the present learned Lyon King of Arms is doing for the Scottish Record Series, published under the direction of the Lord Clerk Register, in editing the *Exchequer Rolls of Scotland* (Edited by G. Burnett, LL.D., Lyon King of Arms, Vol. VIII., 1885. Edinburgh: H.M. General Register House), has been noticed by us on several previous occasions. The task undertaken by Dr. Burnett

is one which requires much special knowledge and no small amount of editorial patience as well as skill. And it is not the kind of work from which the Editor can hope to extract any such brilliant gems of History as should lead to ovations by the general public. The *Rotuli Scaccarii*, indeed, are not calculated to suit the taste of the general public, whether in Scotland or in England. But to the student of Mediæval History, such volumes as Lyon King is from time to time placing before us are most instructive, from the very minuteness of detail which can only repel the general reader. It is by a slow and patient comparison of such side-lights on the general History of the times as are furnished in such works as the Acts of the Lords Auditors and of the Lords of Council and Session, among the older Record publications, and the *Registers of the Privy Council* and of the *Great Seal*, and the *Exchequer Rolls*, among the more recent series under the direction of the Lord Clerk Register, that the student may hope to reconstruct for himself the History of Mediæval Scotland. The same course is being happily pursued for England in the already voluminous series of *Chronicles and Memorials*, under the direction of the Master of the Rolls. Ireland, too, contributes her share, and it is one equally indispensable to the true understanding of the historical relations of the several portions of the United Kingdom, and of their place in the General History of Mediæval Europe.

The period with which Lyon King is now dealing, in the later volumes of his edition of the *Exchequer Rolls* is one of very great general interest. It is the Age of the Foundation of the Scottish Universities, and of the Scottish Archbishoprics. From these points of view, it is an age of definite National individuality in the Intellectual life of the country, as the preceding age had been one of Political individuality. There is not, indeed, so brilliant

an Intellectual life as Italy could boast. There was in Fifteenth Century Scotland no Savonarola, though there were earnest and even reforming Churchmen. And there was in Fifteenth Century Scotland no "Nick Machiavel," though there were some able and some subtle politicians. Life in Mediæval Scotland was throughout harder than in Mediæval Italy, but its lights and shades are as strongly marked, and have a character and an instructiveness of their own.

Reviews.

An Introduction to the History of the Law of Real Property. By KENELM E. DIGBY, M.A., late Vinerian Reader in the University. Third Edition. Oxford: Clarendon Press. 1884.

The Elements of Jurisprudence. By T. ERSKINE HOLLAND, D.C.L., Chichele Professor of Diplomacy and International Law, Oxford. Third Edition. Oxford: Clarendon Press. 1886.

The Literature of the Oxford Honour Schools of Jurisprudence and Modern History, as we knew those Schools in their undivided days, still forms, in our view, a division by itself, a division, moreover, representing an unquestionably growing Literature, with whose rapid growth, indeed, we have seemed perhaps not adequately to keep pace. But if we have not always been able to draw attention as early as we would to the works which attest the life and energy of the Law and History Schools, it has generally been because we have found them so useful as works of reference that we could not spare them for the purpose of review.

This has been eminently the case, for instance, with Mr. Digby's valuable and interesting book on the *History of the Law of Real Property*. The new edition has been our constant companion ever since it reached our hands, and the more we have used it the more highly have we valued both the work and its author. For the purpose which the late Vinerian Reader, in the delivery of his Lectures, had immediately in view, viz., the instruction of students of Law and History at his University, each succeeding

edition renders the book more indispensable. And the same may quite as emphatically be said for the wider purpose which the learned author had also in view from the first, viz., the instruction of students at the Inns of Court as well as at the Universities. The well-known books will, of course, always maintain their special place, but the student who wishes to understand the History of the Law of Real Property,—and we do not see how he can hope to understand the Law without knowing its history,—cannot dispense with the careful reading of Mr. Digby's book. He will then be prepared for profiting by the guidance of Mr. Joshua Williams. Otherwise we cannot but think he would feel like one cast ashore on a *Terra Incognita.*

Looking back at our own Undergraduate days, we feel very strongly how glad we should have been to have had at hand so clear and so thoughtful a guide through the many difficulties of the complicated story which forms the subject of Mr. Digby's book. The system pursued combines the great advantages of the well-known *Select Charters* of Bishop Stubbs with the equally great advantages of a continuous narrative. The student can thus compare the deductions drawn in the history proper with the texts upon which they are based, and if he has been at all properly trained this exercise will be very good for the development of his critical faculty. We do not, of course, suppose that any amount of texts will develop the critical faculty if the student has not got it. But the presence of that faculty must be presumed, or it would become impossible to write any historical books at all, above the level of *Memoria Technica*, if we may go so far as to dignify them with the name of historical books.

It seems to us, as we have said, impossible to study the English Law of Real Property with a view to understanding how it has become what it is, on any better principles than those of Mr. Digby's book. And that is as much as to say that it is impossible to study English Feudalism on any other principles. The distinction between English and Continental Feudalism is a commonplace of writers on Feudal History, and yet it is curious to note how little real apprehension of the nature of the difference can be traced among ordinary writers.

That in England Feudalism became simply a system of tenure, not of government, as on the Continent, is a trite statement repeated by the historian without being apprehended by the general reader. We frequently meet, in works prepared

for the general public, or in criticisms of such works in the ordinary press, with vague statements of a difference between English and Continental Feudalism, which excites an equally vague wonder. Sometimes the difference is even suggested as a problem, the solution of which has yet to be found, instead of being, as in fact it is, one whose solution lies ready to hand, and has long ago been worked out. In the course of a Treatise covering so many centuries of English History, it is scarcely to be supposed that there should not be found points on which students of the subject may and will reach different conclusions. We do not ourselves profess to be able to agree with Mr. Digby in all his conclusions, but we believe that the few points on which we cannot follow him are generally those on which he is rather stating the views of his predecessors than conclusions of his own.

It has long seemed to us, for instance, that it was not the fact that the assumption of the Kingly title by the Teutonic leaders in Britain was early. It appears to us to have been relatively late. What the title of King connoted among the Teutonic races on the Continent appears to us to have been descent rather than power. The real power lay with the *Heretoga*, or War-Band Chief.

The King was such *ex nobilitate*, that is to say, because he was believed to be a descendant of Woden, Wuotan, Odin, or whatever the Divine hero ancestor of Teutonic and Scandinavian mythology should be called. But that descent only conferred a privileged *status*, accompanied no doubt by the potentiality of influence, though not in itself conferring that influence. Kingship, in fact, among the Teutonic races of the Continent seems rather to have been the honorary designation of a Divinely descended class of nobility than an Institution for the government of the Teutonic people. The people, in fact, governed themselves through the general Assembly of the Freemen of the Tribe, the *Mallum*, Field of March or May, or Witenagemot. We do not, of course, forget that after the consolidation of their conquests in Britain the natural tendency for Kingship was that it should increase in power. The conditions with which it had to deal in a conquered country were very different from those of the home in the Continental Fatherland, and consequently demanded, as they received, a different treatment. But of Statecraft, as such, the Anglo-Saxon Polity, we believe, shews very faint traces.

Professor Holland, having practically taken the place in the field of general Jurisprudence for the Oxford Schools, which used to be filled by Austin, naturally finds a rapid demand for new editions of his *Elements of Jurisprudence*. The value of this Treatise has been so amply borne witness to in our pages, both on its first appearance and subsequently, that we feel the less need for discussing it at any length in the present notice. But no *conspectus*, however brief, of the recent Literature of the Law and History Schools would be of use as a guide to students if it did not at least point out the assistance to be derived from Professor Holland's *Elements*.

There is much, both in the compactness of the book and in its wide ingathering of Juridical learning from many a source, not open to John Austin, which alone would justify our assigning a high place to the Treatise before us, even apart from the position which has been given to it at Oxford. There it is, no doubt, an absolutely indispensable companion for the Honour man's work, whatever other authors he may place by its side on his shelves. The points of interest which cannot fail constantly to arise and claim some notice in connection with a book such as that of Professor Holland are too numerous for us to be able to give more than a glance at them. We should like, however, to say a word in regard to *Compositio*, on which subject the learned author refers us to the *Leges Barbarorum*. There are few questions of greater interest in the whole of that very interesting but extremely difficult period when the Barbarians were invading and gradually settling down in the Western Empire, than those presented by the Jural relations of the Roman and the Barbarian. Several institutions which we usually consider as of Barbarian origin seem, if we read authors of the period aright, to have existed already in Roman Gaul at least, if not in other parts of the Empire. Such an institution is the *Comes Civitatis*, and another, even more directly in point here, is *Compositio*. On these no doubt intricate questions, texts have been adduced from Sidonius Apollinaris, and have been commented upon with considerable acumen by a recent writer, M. Adhémar Esmein, in the *Revue Générale du Droit* (Paris: E. Thorin) for 1885. The facts, of course, have been lying ready to hand for us in the Gallo-Roman prelate's pungent epistolary rhetoric. It may be that a drier and more severe style would have sooner led to their value being seen. The facts were unquestionably within the immediate knowledge of the Bishop, for his legal

relation to one of the parties, as *patronus*, compelled him to be concerned in the cause. A *colonus* had carried off the daughter of the nurse of Sidonius, his freedwoman. The penalty under the then Legislation of the Roman Empire was death. Yet Sidonius yields to the suggestion of allowing a *Compositio seu satisfactio* to condone the offence. It seems evident from the *Cartæ Compositionales* of the Gallo-Roman period, cited by M. Esmein, that the habit of acquiescing in this practice had taken root in Gaul before the Frank and Burgundian conquests. In another case Sidonius intervenes as Bishop, and urges his brother Bishop, Lupus, to bring about a *Compositio.*

The question which hereupon naturally presents itself for consideration is whether the *Compositio* which, we think we may say, is clearly shewn to have been in force in Roman Gaul, in the Fifth Century of our Era, was of Roman or of Barbarian origin. M. Esmein adopts the former view, and for this reason, which certainly seems a strong one, that it is evidently due chiefly, almost entirely in fact, to the action of the Clergy, especially the Bishops. We are indeed shewn an intervention by *boni homines* as well, but it is above all the position of the Bishop as *Intercessor* which avails to promote the spread of this institution. Under these circumstances we seem to be warranted in looking for the sources of *Compositio* not only among the *Leges Barbarorum*, but also among the customs of the Roman inhabitants of Gaul, which were in conformity with Constitutions of Diocletian and Maximian. Similar customs prevailed in Roman Africa, where Augustine of Hippo claims it as part of the priestly office *intervenire pro reis.* The conclusion drawn by M. Esmein from these premises appears to be both natural and reasonable, when he says of *Compositio* that it was an institution "born in the Roman World, which continued its career and attained to fuller development under the Frankish Monarchy."

We have dwelt at some length upon this point simply as an instance of the suggestiveness of Professor Holland's book, and as an incidental illustration of the byways of Roman Legal History which may be opened up to the readers of the *Elements of Jurisprudence.*

Les Constitutions Européennes. Par G. DEMOMBYNES, Avocat à la Cour d'Appel de Paris. (Second Edition.) Paris: Larose et Forcel. 1883.

Les Constitutions Modernes. Par F. R. DARESTE, Ancien Magistrat, Avocat à la Cour d'Appel de Lyon : avec la Collaboration de P. DARESTE, Avocat au Conseil d'Etat et à la Cour de Cassation. Paris : Challamel, ainé. 1883.

In placing before the world, in a succinct and readily accessible form, the constitution of the body politic of various lands, the authors of the above works have laid all civilised communities under a deep debt of gratitude to them. No studies are better calculated to advance the progress of the human race, no topics are of more engrossing and permanent interest than those to which the results of their labours have contributed. By dint of their researches we are enabled, at the expenditure of a modicum of time, to survey the various methods by which not only other nations are governed, but, what is of still greater advantage, "to see ourselves as others see us." Within the modest limits which they have assigned to themselves, an opportunity is afforded of estimating the different stages of advancement at which each nation has arrived. No better preparation could be found for those who will take the pains to acquire a broad and philosophic conception of political problems. So far as we are aware no counterpart of these volumes exists in our own language, but we are not without the hope that this deficiency in our Constitutional Literature may ere long be remedied.

The field covered by the several authors whose works we have named differs somewhat in character. Not content with treating his readers to an insight into the mechanism of European Parliaments in their Executive, Administrative, and Legislative aspects, and of pointing out the methods whereby their Chambers are filled and the proceedings of the Chambers conducted, M. Demombynes analyses the Electoral system, as well as the local Departmental, Provincial, Communal and Judicial organisation of each nation. His first volume comprises our own country, the Scandinavian Kingdoms, Belgium, Holland, Italy, Spain, Portugal, Russia, with the Grand Duchy of Finland, Roumania, the Balkan States, Montenegro, Turkey, and Greece, and therefore includes countries to which much attention is just now directed. His second volume is devoted to France, Austria, Hungary, Switzerland, and Germany. If, in the laborious process of translating, digesting, and summarising such voluminous materials, some trifling inexactitude or incompleteness of statement should here or there be

discovered, it would be uncharitable to judge the author otherwise than leniently, and it is in this spirit that we venture to point out a slight inaccuracy in rendering the Speaker of our House of Commons by the very literal but inappropriate equivalent, *Orateur*, instead of the true rendering, which would unquestionably be *Président de la Chambre des Députés*. So, again, we do not, in this country, speak of *Judges* of the Peace but of *Justices* of the Peace. These, of course, are matters of mere detail, and we gladly record the fact that no substantial errors, such as would seriously detract from the value of the remarks of M. Demombynes, have come across our notice.

For those who will accept as little as possible at second hand, but prefer to dive into the very *fontes juris*, nothing less than a study of the texts themselves will suffice; and these, or rather translations from the original documents, are supplied by the able and conscientious work of MM. Dareste, which thus forms, in a sense, the complement of that by M. Demombynes. The texts which MM. Dareste publish are solely "Constitutional," taking that term in its most narrowly limited sense, viz., as containing the bases of Political organisation properly so-called. Consequently, Laws concerning the territorial division of States, statutes which partake of a character purely Diplomatic, laws of Dynastic Succession, and, in fact, all matters extraneous to the main scheme, either find no place in the volumes of MM. Dareste, or, where essential for explanatory purposes, are relegated to a foot-note. It would be a mistake to suppose that the *Constitutions Modernes* furnish a complete epitome of the Political Institutions or of the Public Law of any one country. That was not the object aimed at. The written Constitutions in their original form are alone reproduced, without any exposition or commentary upon the doctrines and Legislative enactments destined to supplement the frequent *lacunæ* which may be observed in the documents. The texts given are those actually in force, preceded by historical notices, and accompanied by notes intended to supply references to existing legislation, explanations as to modifications or abrogations of texts, and brief remarks upon some points of Public Law, and, more especially, of that relating to the Electorate. A bibliography, inserted at the end of the text of each Constitution, indicates the publications containing the official texts, the principal analytical and synthetical commentaries on Constitutional Law and works connected

with Constitutional History proper, and an analytical index concludes the second volume.

The limitations which MM. Dareste have imposed upon themselves enable them to include in their collection a much larger number of countries than M. Demombynes. Thus, whilst the list of the latter consists of only twenty-one, that of the former amounts to forty States, including dependencies. Some of these latter, however, as may be imagined, are of minor interest. Besides, though undoubtedly much instruction may be gained from a reproduction of the original text itself, yet, on the other hand, the plan pursued by MM. Dareste has its disadvantages; and our own country is amongst the States which suffers most from the adoption of this system. When by the term "Constitution" is meant a fundamental statute, regulating the powers of the State, and fixing the foundation of Public Law, it must be confessed that this country does not possess one. At no period of our history did our ancestors deem it necessary or expedient to mould our political system in the form of a Code. There exist, it is true, certain historical landmarks, viz.,—Magna Charta, the Petition of Right, the Bill of Rights, and the Act of Settlement, each of which connotes an epoch in the development of our Institutions. But it is not by simply printing such documents as these in succession that a student can be aided in forming a comprehensive notion of our system of government. If our choice had to be made between the schemes of the two books under review we should, for the reasons intimated, give the preference to that adopted by M. Demombynes in his *Constitutions Européennes.*

Both works, nevertheless, and especially the latter, convey lessons of infinite moment and pressing concern to all who occupy themselves with the Political progress of the human race. From their pages not a few invaluable suggestions may be obtained by those who apply their minds intelligently and without bias to the problems with which foreign statesmen have been called upon to grapple, and some of which may at any moment present themselves before us. From their failures, too, no less than from their successes, an equal amount of instruction may be derived. In these days, when many are eagerly peering into the future, to forecast, if possible, the results that will ensue from our latest experiments in an extension of the Franchise, and, at a time when Demos seems likely to demand a still larger participation in the administration of public affairs,

we cannot but recognise the necessity of informing ourselves as to the manner in which these questions have already found a solution in other States.

The Contract of Marine Insurance. By CHARLES MCARTHUR. Stevens and Sons. 1885.

If it be true that in "The multitude of Counsellors there is safety," then those who are concerned in Marine Insurance ought just now to be in a position of exceptional security, as on this and the closely allied subject of "Average" we have recently had, besides the book now under consideration, a fourth edition of Mr. Hopkins's *Handbook of Average;* Mr. Lowndes's *Law of Marine Insurance*, from whose pen we are also promised shortly another volume on General Average ; a second edition of Mr. Newson's Digest, and the chapters on the subject in the 4th edition of Maude and Pollock's *Merchant Shipping.* The present work is intentionally more of a practical and less of a legal handbook on the subject than any of the other books enumerated, and on this account better adapted for the table of the Merchant, who wants to know what is the wise thing to do than for the shelves of the Lawyer, who is called on to devise means of extricating him when he has not acted wisely. On this assumption, it would perhaps be unfair to dwell too much on what is certainly a defect in a legal text-book, viz: that whilst in the text and notes, as a rule, a reference to only one report of a case cited is given, and that, even amongst contemporary reports, not to the same series, the Index of Cases gives merely the name of the case and the page or pages of the book where it is mentioned, so that unless the reader has all the Reports or the *Law Magazine and Review* Quarterly Digest at hand, he will be very frequently unable to refer to the cases themselves without a troublesome amount of search. In the case of the mercantile reader it may even be a doubtful advantage to have any Reports referred to, or even, so long as the author correctly states the principles to be deduced, to have names of cases given, which do not necessarily convey any idea to his mind and interrupt his reading of the text. It would not be difficult, we think, to gather from the volume before us the fact that the author is an Average adjuster, and that, in consequence of this, that portion of the work which deals with the subject of Average is likely to be the most

useful. For example, nothing can be neater and clearer than the statement of the doctrine to be drawn from the very recent and most important case of *Svensden* v. *Wallace* in the House of Lords, given in note (h.) p. 158:—"That according to English Law a General Average Act is one external to the contract of affreightment which cannot judiciously be left unperformed, and the object of which is the attainment of general safety," where general safety is happily contrasted with the completion of the adventure. Not quite so accurate, perhaps, is the doctrine the author deduces on the next page, note (m.), from a comparison of the cases of *Attwood* v. *Sellar* and *Svendsen* v. *Wallace*, the true doctrine to be deduced from them being, in our opinion, not that the expenses of reloading cargo are General Average or Particular Average according to whether the cause of making a port of refuge was to repair in consequence of a General Average Act, or to make good Particular Average, but rather that whilst the latter part of the proposition is true, the former may or may not be, according to the particular circumstances of each case. *Svendsen* v. *Wallace*, in the House of Lords, certainly cannot be held responsible for the proposition (p. 160) that the warehouse rent of cargo landed is a particular charge on cargo, or the outward expenses a particular charge on freight. Lord Blackburn, who delivered the judgment of the House, in which the other Law Lords agreed, expressly declined to decide these questions, as not necessary for the case, the cargo owners having at the outset paid into Court an amount sufficient to meet their liabilities on the assumption that that was the law, and therefore in excess of their liability if it were not. Mr. McArthur's preface is well worthy of careful perusal, as it contains an extremely fair and well balanced exposition of the reasons for and against a change in the Law of Marine Insurance such as was contemplated a year or two ago, and is still in the air; and points out very clearly in what direction reform, if attempted, should proceed. We cannot conclude without expressing both our cordial agreement with the author as to the desirability of re-establishing that uniformity of Maritime Law among all nations which has been disturbed by the codification of the Law in some countries, and the enactment of Municipal Laws inconsistent with it in other countries, and echoing the generous recognition he gives to the persistent and already largely successful prosecution of this great work by Mr. Lowndes.

A Practical Treatise on the Law of Trusts. By (the late) THOMAS LEWIN, Esq. Eighth Edition, by FREDERICK ALBERT LEWIN, of Lincoln's Inn, Barrister-at-Law, and late Fellow of Caius College, Cambridge. W. Maxwell and Son. 1885.

The new Edition of "Lewin on Trusts," surpasses its predecessor considerably in bulk, the edition of 1879 consisting of only 1,016 pages, while the volume before us contains 1,239. Of the additional 223 pages about 140 belong to the text, while the remainder (with the exception of two or three in the Appendix of Statutes) mark a notable increase in the items of the Index. This is without counting the Table of Cases, which attests Mr. Lewin's industry by the addition of upwards of six pages, say about 720 new decisions. The text, of course, claims our principal attention; and we find that, wherever there is a large addition of matter in any one chapter or section, it is due, as might be expected, to recent legislation, of which the details are carefully incorporated, together with cases on decided points and comments on doubtful points as yet undecided. Thus, between "The Duties of Trustees of Charities" and "The Powers of Trustees" (perhaps as a closing sub-title of "Duties of Trustees") we find a new chapter of twenty-two pages on "Trustees under the Settled Land Acts;" and in the chapter on the "Estate of a Feme Covert Cestui-que-trust" there are about eighteen pages of new matter, principally relating to the Married Women's Property Act, 1882, and its construction. The other additional matter is allotted in smaller instalments to the various divisions of the book, sometimes at the rate of six or eight pages per chapter or section, sometimes with a more sparing hand; always, however, with an evident determination to fit each fact or principle into its proper place in relation to the context, so as to run no risk of presenting the reader with anything that may be stigmatised as *rudis indigestaque moles.*

As regards the many moot points under the Act of 1882, Mr. Lewin expresses his own views clearly and boldly, but without unbecoming dogmatism. On the well-known question arising under section 5, he dissents from the view first adopted by Mr. Justice Chitty, and thinks that *Baynton* v. *Collins* * can "scarcely be considered final." This opinion is now confirmed by the Court of Appeal.† Concerning the questions of right of

* 27 Ch. D. 694 (Chitty, J., 1884).

† *V.* Reid *v.* Reid, L.R. 31 Ch. D. 402 (C. A. 1886).

Administration and Curtesy in the case of property within the Act, Mr. Lewin leans to the popular view, in other words, the view which is favourable to the husband. Without taking upon ourselves the championship *à outrance* of the wife in these matters, we may submit that there is much to be said on her side. It can scarcely be denied that the Act says she shall *hold* property *in the same manner as if she were a feme sole;* and as the word "hold" is not limited to her life or to the period of the coverture, it must, it would seem, give her the fee simple in the case of realty and an absolute interest in that of personalty. If this be so, it is difficult to see how the property can go to anybody after her death (supposing her to have made no disposition of it) except the persons who would have been her heirs or next-of-kin (as the case may be) if she were a *feme sole*. It cannot be said that property within the Act stands on the same footing as ordinary separate estate, the latter being, even under the Act of 1870, merely an equitable interest as to which Equity "follows the Law," while the former, apparently, is a new kind of property, a *legal* separate estate, with which Equity has nothing to do. As regards the personalty, if it be urged that the 25th section of the Statute of Frauds gives the husband a right to his wife's personal property after her death, it may be answered that it merely reserves his right at Common Law, and cannot affect a purely statutory property of which the old Common Law never contemplated the existence. And with respect to realty, the further argument is available, that Curtesy, in its origin, was part of the husband's general estate by marriage, called *maritagium* or "Marriage-hood,"* and that it is difficult to understand how it can attach to a property in which he certainly has no right or interest during the marriage. To these arguments, however, an advocate of the husband may answer that the Legislature could not have intended to sweep away these ancient rights without mentioning them in express words, and a Court of husbands is not, perhaps, unlikely to listen to such a plea! Mr. Lewin disapproves of the decision under which a will made by a woman during coverture is ineffectual as regards property which comes to her after the husband's death,† and we agree with him in thinking this a "narrow construction." He is of opinion (having regard especially to section 24, which exempts

* Glanv., Book VII., Ch. 18; *Stat. de ten. p' legem Angl'.*, 1 Rev. Stat. 129.

† *V. In re Price; Stafford* v. *Stafford*, L.R. 28 Ch. D. 709 (Pearson, J., 1885).

the husband from the liability for the wife's breach of trust), that the Act applies to the purely legal estate of a trustee no less than to ordinary property, and in this, again, we are inclined to think that he is right ; but there is a wide difference between preaching and practice in such matters, and we should certainly not have the courage to waive concurrence and acknowledgment without the authority of the Court !

In dealing with the Settled Land Acts (and other Acts only comparatively less important as regards his subject, *e.g.*, the Conveyancing and Law of Property Act, 1881, and the Agricultural Holdings Act, 1883), Mr. Lewin shews the same independence of judgment. He has, it seems to us, a little misunderstood Mr. Justice Pearson's decision as to an "original" and a "derivative" settlement.* We read that case as simply deciding that, where the Court is asked to appoint trustees of a settlement for the purposes of the Act, it will do so without taking any notice of a later settlement dealing merely with a share, *e.g.*, a settlement made by a daughter of her share in remainder. This seems entirely in accordance with the Act, as there are two distinct settlements within the definition in section 2, each entirely independent of the other. Mr. Lewin, we think, has given the case a wider significance; if not, we cannot understand why he objects to it. On the other hand, we entirely agree with him in the opinion that, while the Act apparently desires to protect remainder-men, its provisions for that purpose are inadequate. But our space will not permit us to follow Mr. Lewin through all the mazes of this intricate piece of legislation. Suffice it to say that his remarks, here and elsewhere, will be found thoughtful and suggestive, and will always command respect even when they may happen to be at variance with the reader's own opinion.

The addition of about 76 pages to the Index is a boon of great value, more especially as that part of the work has been entirely reconstructed, and is now (whatever it may have been before) an agreeable and efficient guide to the book. The "Tabular Analysis" at the beginning remains as before, save for the addition of "Under the Settled Land Acts" as a new subdivision of "Duties of Trustees." We would fain persuade the Editor, on a future occasion, to prefix a complete and systematic Table of Contents, for which we cannot feel the

* *In re Knowles's Settled Estates*, L.R. 27 Ch. D. 707 (Pearson, J., 1884).

ingenious "Tabular Analysis" to be an efficient substitute. In constructing such a table he would, no doubt, see his way here and there to improvements in the classification of the various topics. It is difficult to sort the titles and sub-titles of a comprehensive work, so far as to put them, throughout, in the best order that can be devised, without having them under the eye in a collective form. We would also advise Mr. Lewin to give a thorough revision to the notes, with a view to ensure the accuracy of all the references, not only as to place, but (a far more important matter) as to the precise effect of each decision. This must be a work of time and labour, but it is quite worth the trouble. Mr. Lewin is following worthily in the steps of his distinguished relative, and he will sensibly enhance the value of their joint work if he scorns to spare himself that drudgery of revision which is too often neglected, but without which the high quality of sustained accuracy cannot be secured.

The Candidate's and Election Agent's Guide: for Parliamentary and Municipal Elections; with an Appendix of Forms and Statutes. By JOHN LOADER, Barrister-at-Law. Stevens & Sons. 1885.

The increasing stringency of the Law against Corrupt Practices at Elections, as evidenced by the Corrupt and Illegal Practices Prevention Act, 1883, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, justifies the production of any work calculated to assist those who may be engaged either as principals or agents in contests for Parliamentary or Municipal honours. Indeed, seeing that within the meshes of the latter statute may be included the acts of persons moving in the Elections of Local Boards, School Boards, and other offices, a knowledge of the law in question would seem to be of general necessity.

Mr. Loader's work is divided into two parts, the first, preceded by a useful Introduction, deals with the Corrupt and Illegal Practices Act, 1883, and the statutes which led up to it. Towards the interpretation of the terms therein used, or at Common Law, we have collected the decisions of many Election Courts; and the writer's deductions therefrom seem to be generally just and sound. In the second part, the practical conduct of an Election is dealt with, and under this head, the "Candidate," "Agents"—paid and unpaid—"Election expenses," and other

matters are treated with care, and as fully as can be reasonably expected in a handy-book. Under "Agency," in the first part, an opinion is expressed that the Statute of 1883 has not materially increased the dangers to candidates by the acts of their agents. But in this view we can scarcely concur.

Mr. Loader, after quoting from other writers who dwell on the risks incurred by a candidate assisted by volunteer canvassers, observes, at p. 75, "But a closer examination will show that the Act adds less to the risks and responsibilities of the candidate than is generally supposed. With the exception of the addition of the offences of illegal practices and illegal payment, employment, and hiring, it adds nothing to the pre-existing stringency of election agency; and with regard to these it is not without compensation. . . . Admitting the risks attending the employment of volunteer helpers, one cannot for a moment doubt that in character and reliability they are vastly superior to the motley array of paid agents that formerly attached themselves to an election contest." This may be so, but the "additions" appear to us to be considerable, and the dividing line between the lawful and the unlawful practice not too obvious. Mr. Loader thinks these difficulties will be met by the deterrent effect of the severe penalties imposed upon offenders, though he admits that a few elections may at first be avoided through ignorance of the provisions and penalties of the Act on the part of over-zealous volunteers.

In dealing with the "conduct of an election," much useful practical advice is given, the result possibly of the author's professional experience in an active constituency. "Election expenses" are treated with some minuteness, and seeing the recent expansion of Political associations, Mr. Loader does well to consider the probable effect of some of their proceedings in reference to an impending election. No apology is needed for the statement in the Preface that to render each chapter complete in itself, repetition is sometimes indulged in, for while the result is satisfactory, the volume is not thereby materially enlarged. In the Appendix we have the statutes in full, and it is not unimportant to observe that these are printed in readable type. There is also a good collection of useful Forms, and the Election agent will further find many practical hints in reference to the machinery of his office.

A short chapter is added on the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

The Bankruptcy Act and Rules, 1883, with Forms, Board of Trade Orders, &c., and a Commentary thereon. By M. D. CHALMERS, M.A., Barrister-at-Law (now Judge of County Courts), and E. HOUGH, Chief Clerk, Bankruptcy Department, Board of Trade. Waterlow and Sons, Lim. 1884.

The feature of special value in the edition of the Bankruptcy Act of 1883, prepared by His Honour Judge Chalmers, is the interesting sketch contributed by him of the Bankruptcy Laws of the principal countries of the Continent. This gives the book a place in the as yet slenderly-filled ranks of English Legal literature dealing with Comparative Jurisprudence. We have not omitted to bring this feature to the notice of friends of ours on the Continent, some of whom have themselves returned the compliment, as in the case of the able *Rassegnà di Diritto Commerciale* of Turin, of which a special portion was assigned by the Editor, Sig. Fiore Goria, to a translation of the English Bankruptcy Law of 1883. We cannot but regret that Judge Chalmers's account of the Foreign Bankruptcy Laws should not be somewhat fuller. The subject might well give an opening for a Treatise, only we fear that the engrossing occupations of his Judicial office will hardly admit of our looking for such a work just at present. The Commentary on the text of the Law of 1883 would also well bear amplification. Coming from a source of such recognised authority on the subject, it is disappointingly brief. We observe that the English Legislation of 1883 forms the basis of a Bill for India introduced into the Vice-Regal Council by Mr. Ilbert, and we cannot but hope that Judge Chalmers will take the opportunity thus afforded to give us a new edition of his book, with a material enlargement of the Comparative view of Foreign Bankruptcy Laws.

The work of drafting Legislation for India on such a subject as Bankruptcy must present many special difficulties. We know of course, that Mr. Ilbert is not likely to be deterred by the magnitude of a task, but we are not surprised to read that modifications of his Draft have been suggested by Chambers of Commerce and others interested in the Bill.. We shall watch the course of the proposed Legislation with interest, as it presents what is no doubt a great opportunity for useful though not by any means showy reform. The author of a good Bankruptcy Law for India, however, would probably lead the way to Legislation in other British Colonies and Dependencies, as the

authors of previous Indian Acts and Codes have led and are still leading, in various parts of the world. Nor is our Indian Legislation without its effect upon ourselves at home. We often find the example of the several leaders of Codification in India, from Macaulay to Sir James Stephen, cited at home and abroad as an encouragement to those who would fain follow in their footsteps. The labours of Mr. Chalmers himself in this important field would seem to point him out for following up the proposed Indian Bankruptcy Law by the publication of his views on the subject, which might very well take the shape of a separate Treatise on English, Colonial and Foreign Bankruptcy Law.

The Law of Marriage and Divorce as established in England and the United States. By DAVID STEWART, of the Baltimore Bar. Sumner Whitney & Co. San Francisco, Cal. 1884.

Mr. Stewart has succeeded in bringing into a very small compass a most comprehensive Digest of the law relating to Marriage and Divorce. As he tells us in his preface, the volume under notice deals only with the formation and dissolution of the marriage tie; the question of the relations of husband and wife is to be elsewhere discussed. The first part of the present volume is introductory; the second deals with the formation of marriage; and the third with the dissolution of the tie, whether by divorce *à vinculo*, or *à mensa et thoro*, or by death. The aim of Mr. Stewart's book is to condense into a number of more or less short paragraphs the leading cases on the subject matter of each section; thus, section 246 is less than two 18mo pages, yet there are added to it some fifty notes and about two hundred cases. The notes follow immediately after the relative sections, and are consequently not always at the bottom of each page. It sometimes happens therefore that the section is on one page of a leaf while the notes are on the other, which for purposes of reference necessitates a constant turning backwards and forwards of the page; this, though not affecting the general value of the book, does, we think, detract from its otherwise considerable utility as a hand-book. Mr. Stewart has done his part exceedingly well as an exponent of the Law, and has thoroughly sifted the cases both in this country and the United States which bear upon the subject under discussion. The decisions are skilfully welded together and form a harmonious whole, a great contrast

to some Digests which are nothing but a chaos of head notes. From a work of this kind the English lawyer sees with gratification the great respect with which the decisions of English judges are treated in the United States Courts. In the earlier paragraphs we think that the learned author is not correct in his classification or definition of marriages; thus, in section 6 he says that a voidable marriage is one that is illegal; and in chapter XII., under the title of "illegal marriages," he treats of voidable, such as where one of the parties is impotent or lunatic; now to style such marriages "illegal" is quite inaccurate. Indeed from his use of the terms "void" and "voidable" we are inclined to question whether there may not exist some difference, unknown to us, between the English and American acceptation of the terms. Mr. Stewart's volume cannot fail to be very useful to all who consult its pages; for they will find in it a compendious and well indexed storehouse of case-law on the subject of Marriage and Divorce.

A Handbook of the Law Relating to the Management of Parliamentary and Municipal Elections. By MILES W. MATTINSON and STUART C. MACASKIE, Barristers-at-Law. Waterlow and Sons. 1884.

A somewhat ambitious title has been given to Messrs. Mattinson and Macaskie's *Handbook*, and it scarcely arrives at being a concise statement of the law relating to the machinery of Elections, as claimed in the Preface. It consists of the Ballot Act of 1872 with sectional annotations, and some cases are cited as to the effect upon the Election of breaches of the provisions of that Act. This little pamphlet contains further a Table of References to Statutes bearing on the Procedure of Parliamentary Elections. As a portable guide to the portions of Election Law with which it deals, the small volume produced by Messrs. Mattinson and Macaskie probably bears the bell.

THE
LAW MAGAZINE AND REVIEW.

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I.—THE LAND LAWS OF INDIA.

III. The Land-Settlement and Tenures of the North-Western Provinces.

THE present paper opens with the dawn of the Nineteenth Century and carries the reader back to the days when, after vain attempts to prop up the power of the Nawab Vizier of Oudh, by hiring out the Company's troops to defend his territories for the modest annual subsidy of seventy-six lakhs, —a practice condemned by Francis, when initiated by his enemy Warren Hastings, but afterwards continued by himself —that Ruler was at last reluctantly compelled, as a substitute and provision for the money payment, which was always in arrears, to transfer to the East India Company, in perpetual sovereignty, territories afterwards divided into the districts of Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad and Goruckpore. The territories thus added to the British possessions in India were afterwards known as the "Provinces ceded by the Nawab Vizier," and were speedily brought under the Regulation Law by Regulation II. of 1803, which established and defined the Jurisdiction of the Courts of Judicature for the trial of Civil Suits upon the lines already laid down by Regulation III. of 1793, for the cities of Patna, Dacca, and Moorshedabad. These territories formed the nucleus for a new dependency of the Government of India, and the Hon. Henry Wellesley was transferred from the charge of his brother's private household at Calcutta to assume the reins of Government

of the new province under the style and title of Lieutenant-Governor, and President of the Board of Commissioners, of whom there were three. Although assured by the Governor-General that "no consideration inferior to the most urgent demand of the public service could have induced him to have withdrawn his brother from the management of his personal and domestic arrangements, the loss having been irreparable to his private interests," the Court of Directors were sceptical enough to view the appointment with "some jealousy," and were not deterred from expressing their strong disapproval of it, seeing that "so many old servants were on the spot, who must have been at least as well qualified as his brother to take this situation." In those days, however, there was no submarine cable, and no means of cancelling an appointment by telegram : it took several months for despatches to travel between London and Calcutta, and the Hon. Henry Wellesley continued to hold his new office till the beginning of 1803, when he resigned it. During this period the Commissioners discharged the functions of Judges of Appeal and Circuit, and aided the Lieutenant-Governor in preparing Regulations adapted for the requirements of the newly-acquired province.

Meantime, events were marching onward with a rapid pace, and the face of Indian history was undergoing a vast change. The star of the Mogul Empire was fast sinking in the north-west, and that of the Mahrattas had reached the full blaze of its splendour in the south. The Emperor, shorn of every remnant of Imperial power, reduced to poverty and a prisoner in the hands of the Mahrattas, was spared the further mortification of beholding his subsequent misfortunes by the ruthless cruelty of an ungrateful favourite, named Gulam Kadir, who had deprived him of his eyesight in 1788. Holkar and Scindiah, on the other hand, the one descended from a shepherd and the other from a cultivator

of the soil, were rivals for Mahratta leadership, and were disturbing the tranquillity of Hindostan. The famous Treaty of Bassein, concluded by the British Resident with the Peishwa on the 31st December, 1802, and confirmed by the Governor-General on the 11th February, 1803, which is so bitterly attacked by the historian Mill, was intended, by the restoration of the Peishwa's Musnud at Poonah, to weaken the power of these warlike and ambitious Chiefs, and, by interposing the authority of the British on the side of the Peishwa, the then nominal but former actual head of the Mahratta confederacy, to check their unwarrantable pretensions and the further growth of their power. "It was thought likely," says Horace Hayman Wilson, "that Scindiah would know his strength better than to hazard a contest with the British Government; that the Raja of Berar, beside his inactive temperament, had interests opposed to those of Scindiah, which rendered their union improbable; and that, even should it take place, and Holkar be joined with them, the confederates would still be too doubtful of their strength to risk the encounter." But these calculations of the various considerations that were likely to prevent an occurrence of war were soon falsified by the actual events. The Mahrattas viewed with intense jealousy the alliance between their nominal head — the Peishwa — and the British Government, and formed a coalition amongst themselves, hoping by a combined effort to withstand the military resources of the East India Company. "The Treaty," says Mill, "produced a war which laid upon the East India Company a frightful load of debt." The first part of this scathing sentence is doubtless true, but it is only one of many instances which History records, where the result of a particular action is the direct contrary of what was intended. The Governor-General may have been too sanguine of the good to be expected from the Treaty in question, but, while he was too experienced an administrator

to be blinded by it into a sense of false security, and therefore wisely prepared for the contingency of war, it was a contingency which there is no reason to doubt he sincerely hoped might still be averted. To speak, however, of this war as merely one which laid a frightful load of debt upon the East India Company, is to look upon the debit side of the account and to disregard the items on the credit side. The net profit to the East India Company was a large extension of its territorial sovereignty by the conquest of a rich and fertile country, including the provinces comprising the districts of Panipat, Allyghar, the northern and southern divisions of Saharunpore and Agra, ceded to the Company by Daulat Rao Scindiah under the Treaty of Sirji Anjengaum. But the war had the further and important result of consolidating our dominions in India, of breaking once and for ever the Mahratta Confederacy, and of establishing the undisputed supremacy of the British as the Paramount Power. Our progress may have been one of aggression. But once we embarked on the enterprise of ruling the country that had fallen to our lot we had no help for it but to go on. "We are," wrote Mr. Bosanquet, in a private letter to the Governor-General in May, 1802, "and *must remain* the sovereigns of India, and if our adversaries are not content to meet us upon this footing, they may as well quarrel with us upon this point, as upon any other. We owe our safety to the *sword* and not to parchments, and we ought to take to that which has carried us through our difficulties." It was the victorious sword of our gallant troops, headed by their brave old Commander, Lord Lake, which brought this bloody Mahratta war to a successful close; which, in the metaphorical language of the native newswriters of the time, restored his sight to the unhappy Shah Alum from excess of joy at being seated once more on the Peacock throne of his ancestors; and which won the important territories

ceded to the Company under the Treaty of Sirji Anjengaum of the 30th December, 1803.

These territories were called the "Conquered Provinces situated within the Duab and on the right bank of the River Jamna," and to these, in conjunction with the district of Bundlekund, ceded by the Peishwa about the same time (*i.e.*, 16th December, 1803), the Laws and Regulations previously established for the internal government of the provinces ceded by the Nawab Vizier were extended, with certain modifications, additions, and amendments, by Regulation VIII. of 1805. A prior Regulation (No. IX. of 1804) had already made provision for the administration of Justice in Criminal cases in the conquered provinces. For general administrative purposes, these ceded and conquered territories were combined, and denominated "The Ceded and Conquered Provinces," and were subsequently formed, with some additions, into the existing Lieutenant-Governorship of the North-Western Provinces.

This, then, was the way in which that large territorial area, whose Land Settlement and Tenures we have now to describe, was acquired within the short space of three years.

Following, as this late acquisition did, within ten years of the Permanent Settlement of Bengal, it was not to be expected that the Government should at once depart from the theory on which that Settlement was based. But at the same time doubts had already begun to be entertained of the wisdom of that measure, which enquiries in the new province ceded by the Nawab Vizier on the 10th November, 1801, had only tended to confirm. It was therefore thought desirable that a Provisional Settlement should first be introduced, and that a Permanent Settlement should be deferred until fuller information was available. Acting accordingly under instructions from the Court of Directors, the Marquis of Wellesley issued a proclamation on the 14th July, 1802, to the *zemindars*, *talukdars*, and other proprietors of the

Ceded Provinces, in which it was notified that after the expiration of ten years, a Permanent Settlement would be concluded "*for such lands as would be in a sufficiently improved state of cultivation to warrant the measure.*" A similar proclamation was issued three years later, addressed to the *zemindars*, independent *talukdars*, and other actual proprietors of land in the Conquered Provinces and Bundlekund. During this period of ten years, however, it was notified that two triennial and one quadrennial settlement were to take place on a progressive revenue, in the proportion of two-thirds of the difference between the annual amount of the first triennial settlement and the actual yearly produce of the land at the period of the expiration of that settlement, and, in the case of the quadrennial settlement, of three-fourths of the net increase of the revenue during any one year of the second period. But before the second triennial settlement for the Ceded Provinces was effected, the provisions of paragraph II. of the Proclamation (*vide* Reg. XXV. of 1803) were rescinded, and in lieu thereof it was enacted, by Sec. III. of Reg. V. of 1805, that for the ensuing *Fasli* years of 1213, 1214, and 1215 the settlement was to be concluded (subject to certain exceptions saving settlements then actually concluded), at the same annual *Jamma* as was payable under the first triennial settlement which was to expire with 1212 *Fasli*. Two years later, another Regulation, No. X. of 1807, was passed, the fifth Section of which again announced that, subject to the sanction of the Honourable the Court of Directors, the *Jamma* which might be assessed upon revenue-paying estates in the provinces ceded by the Nawab Vizier in the last year of the quadrennial settlement (*i.e.*, the *Fasli* year, 1219,) should remain fixed for ever. The Court of Directors were not, however, prepared to give an unqualified sanction to the proposed measure, though they were not unwilling to abide by the more restricted promise contained in the Proclamation of 1802, that is to say, to

sanction a Permanent Settlement "for such lands as might be in a sufficiently improved state of cultivation to warrant the measure." It thus became necessary for the Government of India to rescind its wider promise, and this was effected by Regulation IX. of 1812, which further went on to prescribe the principle upon which the permanent demand should be fixed upon all lands that were ascertained, after enquiry, to be in the sufficiently improved condition contemplated by the orders of 1802, incorporated, as we have seen, in Regulation XXV. of 1803. That principle was to leave to the proprietors a net income of ten per cent. on the *Jamma*, exclusive of charges of collection. The Board of Commissioners were further required to submit to the Governor-General in Council a report "specifying the estates which may not appear to be yet in a sufficiently improved state of cultivation to admit of the conclusion of a permanent settlement, without a sacrifice of those resources which may hereafter be derived from them for the exigencies of Government." "In all cases of that nature," the Regulation proceeded, "the Governor-General in Council will determine, on consideration of the information which may be furnished by the Board of Commissioners, whether the settlement of such estates shall be made for the term of three or five years, or for any other period, according as may appear most conducive to the public interests." This limited period was fixed with reference to the despatch of the Court of Directors of 27th November, 1811, in which they intimated that they had come to the conclusion that a Permanent Settlement of the Ceded and Conquered Provinces was then premature and would result in a large sacrifice of revenue, and in which they also directed that no settlement should be made for a longer period than five years. The first district where the Enquiry contemplated by the last-named Regulation was commenced was that of Cawnpore,

but it was soon evident that in the absence of some fixed standard as to what degree of improvement was to entitle to a Permanent Settlement, the Commissioners had nothing to guide them in making their recommendations. They accordingly asked for specific instructions as to what proportion of waste land should operate to exclude from the benefit of a Permanent Settlement, suggesting at the same time that it should not be allowed to vary more than from one-third to one-fourth. But although this suggestion was generally approved of, and although the Settlement of Cawnpore disclosed that the land fit for cultivation but uncultivated in that district was less than a fifth, neither the authorities in India nor the Court of Directors in England would agree to make that Settlement (effected for five years from 1220 to 1224 *Fasli*, A.D. 1812-1813 to 1816-1817) permanent, and the like policy was adopted in regard to other Settlements effected about the same time. These quinquennial Settlements were extended in the Ceded Provinces for a further period of five years by Reg. XVI. of 1816, and in the Conquered Provinces and Bundlekund for a similar period by Reg. IX. of 1818, and at the close of this extended period we arrive at a very important epoch in the history of the Land Settlement of the North-Western Provinces, which it will be necessary to notice somewhat carefully.

A study of the official records of this period leaves no doubt that the Collectors who were appointed to conduct these Settlements, in trying to avoid the Scylla of too light an assessment, whereby the interests of Government as the ruling power were unduly sacrificed, plunged the unfortunate proprietors of the soil in many cases into the vortex of Charybdis, by fixing a Government demand at which, in but too real a sense, the proprietors, "struck with despair," viewed

"with trembling hearts
The yawning dungeon."

This "all-absorbing idea of realizing a large revenue," as it is termed by the Hon. Frederick John Shore,* had undoubtedly been productive of great injustice. Estates had been sold and confiscated in default of payment of the Government demand, which the proprietors had found it impossible to discharge with any chance of preserving even a bare maintenance for themselves. There was also but too good reason to suspect that in many cases persons had been illegally deprived of their holdings by the violence, extortion, or undue influence of subordinate native officials of the Government. Errors and omissions, moreover, had occurred in the preparation of the Record of Rights, and in the ascertainment of the tenures, interest, and privileges of the agricultural community, which called for inquiry. In order to ascertain the extent of these evils, and provide a remedy for them, a Special Commission was appointed, to which the largest powers were given, by Regulation I. of 1821, the preamble of which, says Mr. Shore, with a bitterness of expression often traceable in his *Notes*, "is calculated greatly to disturb the visions of those who are so fond of descanting on the blessings which the people of India have derived from the British Government." This is not the place to discuss the advantages which the people of India have derived from our rule, but I cannot help remarking that if the injustice and oppression to which Mr. Shore alludes, and which Regulation I. of 1821 was intended to redress, had been intensified tenfold, the general condition of the population of the Ceded and Conquered Provinces in 1821, to say nothing of their condition in 1837, when he wrote, would still have been incomparably better in every respect than in the absolutely lawless period which preceded it by a quarter of a century. It is too often forgotten by critics of Mr.

* *Notes on Indian Affairs*, Vol. i., p. 198.

Shore's stamp that it is only when a people have begun to acquire a sense of what private *right* really is that they feel an infraction of that *right* to be a *wrong*. In the times which preceded our own acquisition of the Ceded Provinces, such a thing as private right was far too shadowy to be appreciated, and certainly the poor man had no tribunal to which he could appeal with any confidence of obtaining impartial justice. The people, therefore, unused to anything better, submitted patiently to the will of their Muhammadan masters. But when with the introduction of our rule we gave them private rights which they could value and esteem, they were not slow to raise their voices when those rights were infringed by unscrupulous underlings whose services British officers were compelled to utilise. And it was when the voice of the oppressed reached the Government from more than one quarter and with a consistency which proved that it was not without foundation, that the remedial measure already referred to was introduced. But, in its desire to redress the wrongs that had already been committed, the Government went, perhaps, too far, and a captious critic once suggested that the title of the Regulation should have been, "A Regulation for destroying all security in landed tenures, and all confidence in the Government." The mistake was that the Regulation permitted the Commission to annul, not only all revenue sales, but even private transfers, whether effected by sale, gift, renunciation, or whatever mode of conveyance, in cases in which there was reasonable ground for believing that the purchase or acquisition was effected by violence, extortion or oppression, or by undue influence, without sufficiently protecting subsequent *boná fide* purchasers. In many instances the lands had changed hands, and the present holders were quite innocent of any participation in the original wrong, having acquired their titles by fair and honest dealing. There were other cases, again,

where persons had bought lands at revenue sales in an open and legitimate manner, and were in no way concerned with the revenue proceedings under which the sales had taken place. It was not only contrary to all principles of Equity that persons in this position should be deprived of the benefit of their bargains, but it was calculated also to undermine the confidence of the people in sales conducted under the orders of responsible Government Officials, when it was seen that years afterwards those sales might be annulled, because there was some reason to believe that they had been brought about by the extortion or oppression of a Revenue subordinate. It happened also that this Regulation followed close upon II. of 1819, which modified the provisions contained in the existing Regulations regarding the resumption of lands hitherto held free, and the one enactment coming so soon after the other tended still further to unsettle titles. The object of the earlier enactment (II. of 1819) like that of the later (I. of 1821) was perfectly just, but it was in the matter of detail that each measure was open to abuse, and which caused both to be intensely unpopular. It was beyond question, for instance, that persons had succeeded in getting their lands exempt from assessment by the production of forged documents, purporting to be grants from former Governments; and no one could deny the right of the present Government to have these alleged titles more fully verified. But the elaborate provisions which the Regulation laid down as to the course to be adopted in such cases afforded wide scope for the enrichment of native officials at the expense of those who had to prove their titles. The *peon* who served the notice on the *zemindar* to appear and to produce his title deeds, the *nazir* who issued it, the *patwari* who measured the land, the *amin* who surveyed it, and the legion of *munshis* who belonged to the Court of the Collector, and through whose hands, at some stage or another of the investigation,

the proceedings had to pass, exacted and obtained a bribe proportionate to the services he or they were able, or rather *assumed* to be able, to perform. It is not surprising therefore that both these enactments, however well intentioned, were regarded by the agricultural population as calculated to work their ruin.

About this time, however, the second of the quinquennial periods of Settlement of the Ceded Provinces was drawing to a close, and as the Court of Directors would not sanction the perpetuation of the assessments then made as a permanent measure, it became necessary to lay down the lines upon which a revision of the existing Settlement was to be made with somewhat greater precision, and to arrange for a more complete record of the various rights and obligations of the several classes and persons possessing an interest in the land or in the rent or produce thereof, upon the basis of which, if it afterwards appeared advisable, a Permanent Settlement might eventually be effected. In July, 1819, Mr. Holt Mackenzie, the very able Secretary to the Board of Commissioners, drew up an exhaustive *Memorandum regarding the past settlements of the Ceded and Conquered Provinces with heads of a plan for the Permanent Settlement of those Provinces;* and the views expressed therein having met with the approval of Government, effect was given to his suggestions by embodying them in Regulation VII. of 1822, which has since then regulated all Settlements in those Provinces and also, as will be seen hereafter, in the Punjab.

The principle underlying this famous Regulation was that of a *Ryotwar* Settlement, that is to say of making the Settlement directly with the subordinate owners and cultivators, to the exclusion of the large farmers who had been employed under the Muhammadan system. This new departure was strongly opposed at the time in some quarters, but subsequent experience has, I think, justified

the wisdom of the measure, and it is no doubt largely owing to it that the Village System has been preserved in the N. W. P. and the Punjab while it has almost disappeared in Bengal. That system was found to have taken much stronger root in these more newly acquired provinces than in the Lower Province of Bengal proper, and it was wisely thought that to adopt the policy of Lord Cornwallis, and to confer proprietary estates on those who were the mere tax-gatherers of the former Muhammadan Viceroys, would have gradually led to the extinction of a peasant-proprietary, and with it of the Village System, the "true proprietary unit of India," * of which it was the necessary outcome. But it was not as an individual proprietor that the shareholder in a village was now settled with by the revenue Collectors. His rights and the extent of his holding were no doubt carefully defined, and the proportion of the revenue demand which he had to contribute was also specifically noted. But his individuality with respect to the revenue payable to Government was merged in that of the Village Community, which was responsible as a whole, through its Headman or *Lamberdar*, for the due payment of that charge. By thus insisting upon the principle of joint responsibility, the Government not only obtained a higher security for the due payment of its revenue, but it also contrived to maintain that spirit of co-ownership and cohesion which mark the Indian village of the true archaic type. The principal features of this new Regulation, the operation of which (so far as it affected the Government revenue) was suspended for five years, and subsequently for five years more, were : (1) the demarcation and registration of every holding in the village ; (2) the future assessment of the revenue with reference to the

* [That the Village System holds this place throughout India is denied by Mr. J. H. Nelson, in his interesting volume, *The Scientific Study of the Hindû Law*. (Lond. and Madras. 1881.)—Ed.]

produce and capabilities of the land at the time of revision, and, in cases where the former revenue was liable to enhancement, the regulation of the new assessment so as to leave the *zemindars* a net profit of 20 per cent. on the amount of the *Jamma*; and (3) a comprehensive registration of the rights of all persons who were interested in the land, whether as superior proprietors, under-proprietors, or as tenants, and also of the customs prevailing in the village with respect to the alienation and transfer of land, or the rules of succession, &c.

But the weak point about this law was that it imposed upon a single Collector the impossible task of himself conducting all enquiries, which, remembering that he had on an average 3,548 square miles of territory, 3,772 towns and villages, and a population of above 800,000 souls subject to his sway, it seems inconceivable that he could ever have been reasonably expected to complete. In those days, moreover, the Collector was not like his successor in the Punjab of the present day, a mere glorified Head Clerk who had to answer references. His hands were fully occupied with a multiplicity of duties, most of them of an important character, which it would require a complete page of this *Review* to enumerate in detail, and the marvel is that he was able to get through a tenth part of what was required of him. Help, however, at last came, and in 1833 the Office of Deputy Collector was created, to which Natives of India were declared to be eligible.

The period for which the Revised Settlements under Regulation VII. of 1822 were effected was thirty years, and when this period began to fall in the country was just recovering from the combined effects of the Mutiny and of the terrible Famine of 1860. The one catastrophe had once again converted the greater part of the North-West into a vast battlefield, devastating large cultivated areas and paralysing trade. The other had decimated the surviving

population, and left towns and villages peopled with the dead. Then arose once more the cry for a light and permanent Settlement, which was taken up and advocated by the Board of Revenue. The East India Company had meanwhile ceased to exist, and India had become a direct dependency of the Crown. The Secretary of State entered heartily into the proposal, and expressed the readiness of Her Majesty's Government to go even further than it had ever before been suggested, namely, to sanction a *Permanent Settlement of the land revenue throughout India*. "Her Majesty's Government" proceeded this remarkable despatch,* "*entertain no doubt of the political advantages which would attend a Permanent Settlement.* The security and, it may almost be said, the absolute creation of property in the soil which will flow from limitation in perpetuity of the demands of the State on the owners of land, cannot fail to stimulate or confirm their sentiments of attachment and loyalty to the Government by whom so great a boon has been conceded, and on whose existence its permanency will depend." It was accordingly ordered that a Permanent Settlement of the land revenue throughout India should be introduced gradually into all districts or parts of districts in which no considerable increase was to be expected in the land revenue, and where its equitable apportionment had been or might thereafter be satisfactorily ascertained. But the "fulness of time" for the accomplishment of this often-repeated promise had not yet arrived, and the Fates had decreed that it should be long distant. Minutes were written, and Despatches were from time to time transmitted, it is true, from Downing Street to Calcutta on the subject. In March, 1865, the Secretary of State formulated a rule that a Permanent Settlement might be immediately effected for all estates in which the actual

* No. 14 of 9th July, 1862, published at p. 2889 of the *Calcutta Gazette* of 16th August, 1862.

cultivation amounted to 80 per cent. of the culturable area, but that all other estates should be settled for a term not exceeding thirty years, no expectations being held out and no pledge being given to the proprietors in respect to the course which, at the expiration of that term, it might appear expedient to the Government of the day to pursue in dealing with their properties. Two years later the further condition was attached that no Permanent Settlement was to be concluded for any estates to which canal irrigation was, in the opinion of the Governor-General in Council, likely to be extended within the next twenty years, and the existing assets of which would thereby be increased in the proportion of twenty per cent. In this way, one condition being added to another, the question drifted on for some years more without any practical result. But in 1871 facts came to light in the Districts of Meerut and Bulandshahar which indefinitely postponed its final settlement. In the former District it was ascertained that in a single *Pargannah* the proper assessment to which the Government was entitled was 245000, whereas the *actual* assessment was only 148000. To have at once added the enormous difference represented by these sets of figures to the Government demand was felt to be impossible, while it would have been reckless folly to have abandoned for ever the prospective chance of substantially increasing the income of the Exchequer by accepting a much smaller sum than what the land was even then capable of paying. On the other hand, it was found in Bulandshahar that if the Government accepted a Permanent Settlement at that time, it would have to relinquish fourteen per cent. of the increased revenue which it might hope hereafter to realise, when the *ratio* of rent payable by the tenant to the proprietor was eventually adjusted with reference to the upward tendency of rent that had already set in. This led to the suggestion of a third condition of a Permanent Settlement,

namely, that the standard of rent prevalent, or the estimate of "net produce" on which the assessments were based, was adequate; or, having due regard to the soil, facilities of irrigation and the proportion of dry and wet land, was not below the level of rent throughout the country at large. But the Government of India was not prepared to assent to this third condition, though it was conceded that the additional facts now brought to light indisputably proved that the existing conditions of a Permanent Settlement were insufficient. The whole question was therefore again opened out, and, with reference to the magnitude of the Economical revolution through which India was then passing, the Governor-General in Council recommended that the Orders of 1867 should be held in abeyance, pending a further discussion of the entire subject. This course was approved in the Secretary of State's Despatch of 21st July, 1871, and the correspondence has since been shelved, with no apparent desire to revive a question which is full of difficulty, and which may well be allowed to slumber for another ten years at least. Such, then, has been the history of the Settlement operations in the North-Western Provinces of India.

It is now time to turn to the chief Tenures which prevail in these territories, and considering the length to which this Paper has necessarily extended, I shall endeavour to make the description as brief as possible.

It has already been remarked that the generality of villages in the North-Western Provinces are of the Joint type, and this is what, in the technical nomenclature of the Revenue Courts, is termed the pure *Zemindari* village. In this tenure the rights of the shareholders *inter se* are generally regulated by ancestral right, the proprietors tracing their descent from an alleged common ancestor who founded the village. The lands are all held in common, and the rents paid by the proprietors are thrown into a common stock,

with all other profits from the estate, and after deduction of expenses, the balance is divided amongst the proprietors according to their legal shares. The *Zemindari* village is, in fact, the Joint Hindu Family, presented to us on a large scale and in its archaic simplicity.

Supposing, however, that the village was originally founded by say four persons, whether related or not is immaterial, and that the lands were divided amongst them. In such a case the village would be divided into four divisions or *pattis*, and although the descendants of each of the four founders would have no claim upon the lands in any division or *patti* other than their own, they might *inter se* hold the lands appertaining to their *patti* in undivided ownership. Or again, the shareholders in each *patti* might have had their culturable land divided, and only a sufficient area of the waste reserved for pasturage kept common. Or a third case may be imagined, in which the entire lands of each *patti* have been completely divided. These are all forms of what is called a *Pattidari* Estate.

We next come to the consideration of tenures where the separate heritable and transferrable properties are not of the same kind, one being superior and the other inferior.

Where a person, either by grant from the dominant Power, or by the act of the people themselves, or some long anterior act of usurpation on the part of an ancestor, has become a recipient of the revenue intermediately between the Government and the village proprietors, collecting from them what, in his absence, they would have paid to the Government, and paying it in one sum to the latter, with certain deductions for himself, there exists the ordinary form of the *Talukdari* tenure, which is especially common in Oude. The holder of this tenure, the *Talukdar*, is the superior proprietor, while the inferior proprietors are variously called Village *Zemindars, Biswadars* or *Mucaddams*.

In the North-West Provinces it has been the general rule, sanctioned and approved by the Court of Directors, to make the Settlement with the inferior proprietors, at all events when the superior and inferior proprietors were unconnected by blood or clanship, and had long been opposed to each other, and the latter were clamorous for severance of interests.

The *Istemrari* differs from the *Talukdari* only so far that the Government demand is fixed in perpetuity, in the grant to the intermediate receiver of the revenue.

Passing from the proprietary to the non-proprietary occupants of the land, it is one of the great advantages secured by Regulation VII. of 1822 that the rights of all these subordinate agricultural classes were carefully enquired into and recorded in the Settlement Papers of the North-West Provinces. Non-proprietary cultivators are generally either the descendants of former dispossessed proprietors, or they have been located on the estate by the present proprietors, or their predecessors. Broadly speaking, they are divided into two large classes, those who have rights of occupancy and are entitled to hold at fixed rates, and those who are mere tenants at will. The former are variously known as *Chupper-bund*, *Khudkasht*, *Kadimi*, *Mourousi*, *Hakdar*—terms which imply attachment to the soil or prescriptive right. The latter are termed *Kutcha Assamis* or *Pykasht*, according as they reside in the same or another village.

At the present day, all these persons, possessing such varied interests in the land, are found harmoniously settled together in the same village, each perfectly acquainted with his own rights and privileges, and each conscious that the slightest infringement of the same can easily be vindicated by an appeal to the Record of Rights appertaining to his village. The preparation of such a complete Record, and the framing of an entire Land Law for a strange country,

was indeed, as Sir Henry Maine has well observed,* "the most arduous task which a Government ever undertook." But this task, arduous as it was, was not only undertaken, it was successfully accomplished; and the Land Settlement of the North-Western Provinces, in its final and complete shape, may well be reckoned as one of the most glorious achievements of British Power in the East, as the consolidation and codification of the fragmentary law of the Empire was the crowning glory of the reign of Justinian. The labour in each case was great, but the reward has been commensurate.

" ——— der Tag ist bald erwacht,
Der Morgen naht, wo wir's erringen,
Nicht ohne Kampf, doch ohne Schlacht,
Der Geist ist stärker als die Klingen."

W. H. RATTIGAN.

II.—THE STUDY OF ROMAN LAW.

THE accumulation of text-books on Roman Law, and the accumulation of fresh materials for the study of the Law of Rome, Public and Private, the necessary basis of our general study of Law, cannot easily be kept pace with, in view of the numerous other subjects which also demand our attention.

But from time to time we are glad to seize a moment, and devote so much of our space as other pressing claims admit, for the consideration of recent publications on this most important branch of scientific Juridical training. *Bonum est inspicere*, at least, as Cujacius allowed even of his sworn enemies the Bartolists, and we can only be friendly

* Village Communities, p. 32.

in our feelings towards writers who really devote themselves to the valuable work of popularising the study of Roman Law amongst us, provided that they do not quit the scientific level for the sake of mere popularity. It is eminently desirable, having regard to the little that is, on the whole, done in England for the study of our present subject, that we should have Treatises dealing alike with the General History of Roman Law, and with the Law itself, both Public and Private. We want new editions of well-known and standard text-books, and we also want new translations, and new recensions, as well as Treatises on General Jurisprudence, Historical Treatises, and Practical Manuals. We therefore welcome Mr. Whitfield's version of Salkowski's *Institutes of Private Law*,* as we have welcomed Professor Holland as an exponent of Jurisprudence, and Mr. Sheldon Amos as a historian of the Roman Law, and as we have also welcomed Mr. Moyle, and other workers in various portions of the same field, whatever may be the points in any of their Treatises with which we may be unable to agree, whether as renderings of a Text, or in the way of opinion or exposition.

The point on which we are all agreed is the diffusion of the study of Roman Law, and that is the link common to all the works we have mentioned in the pages of this *Review*, and it is also the link which binds us to them in a fraternity of study.

The sources of knowledge for the pursuit of our common object are numerous and varied, and in some cases not a little increased in number of late years. Bronze and stone, ivory and wax, papyrus and parchment, each and all are at different times and places pressed into the service, to

* *Institutes and History of Roman Private Law*, with Catena of Texts. By Dr. CARL SALKOWSKI, Ordinary Professor of Laws in the University of Königsberg. Translated in full and Edited by E. E. WHITFIELD, M.A., Oriel College, Oxford. Stevens and Haynes. 1886.

make up for us a complete picture of Life under the domination of Roman Law.

To some of us Malaga is best known as one of the few health resorts of the Iberian Peninsula where something of an English colony exists, during the period when the swallows fly southwards. To the student of Roman Law, however, Malaga possesses the special interest of being one of the few places whose Colonial Municipal Law has been in great part recovered from Tablets recently made known to us through the zeal of Continental masters of Juridical Epigraphy.

To some of us Osuna may be chiefly known as giving title to a Spanish grandee, whose great library was famous among the really famous libraries of the Continent in modern times. To the student of Roman Law, however, Osuna, like Malaga, possesses the special interest of being the cradle, so to speak, of the Juridically famous Bronzes of Osuna, to which the late Charles Giraud, of the Institute of France, devoted so much of the later studies in Epigraphy which marked the whole of his long professional career.

From Portugal, from Transylvania, from Syria, Arabia, and Egypt, texts have come to us on Tablets, or on Papyri, throwing fresh light, or causing fresh controversies, on some point of Roman Law, Public or Private. Thus the Law of Mines under the Empire is set before us with an almost living interest in the *Lex Metalli Vipascensis*, enshrined in the Table of Aljustrel. The Law of *Collegia* meets us on the Tablets of Vöröspatuk, near Abrudbanya, in Transylvania, in the records of the *Collegium Aurifabrorum* of Auraria, the modern Abrudbanya. The *Argentarius*, or Banker and Money-lender, shews us his mode of doing business in the Wax Tablets of Pompeii, preserved for us by the hermetic sealing of careful Cæcilius Jucundus, hard by the street of the Eumenides. The lectures of Professors, taken down by the more diligent of their hearers, stand out

for us in new life from the faint texts of Egyptian, Syrian and Sinaïtic Papyri.

The wealth of fresh materials, it will be acknowledged even from this our brief and imperfect enumeration, is great, and apparently growing, for we cannot suppose that we have more than a faint knowledge of the treasures lying hidden away in the recesses of little visited Eastern Monasteries. At rare intervals some Western student, travelling in the East, is fortunate enough to gain access to a Monastic Library, and to be able to recognise, perchance in the binding of a Liturgical or Theological Treatise, fragments of Law texts of the Schools of Berytus and Alexandria. There is a gain to science in every one of these fragments, however imperfect, and we can only hope that their number and extent may ere long be increased.

We could have wished that Dr. Salkowski had given us more in the way of citation and exposition derived from these various epigraphic and MS. discoveries of recent times. They were perhaps reserved for other courses than those now presented to us by Mr. Whitfield, which in themselves will be of assistance to the student as concentrating the subject of Roman Private Law within the space of a single, though indeed a considerable sized, volume. Mr. Whitfield has the advantage of having been himself a hearer of Professor Salkowski, and we can only regret that the publication of his version of the *Institutes and History of Roman Private Law* of the distinguished Königsberg Professor should apparently have been somewhat hurried. This has evidently been the cause of an inadequacy of revision which occasionally mars the symmetry of the text, and to that extent also hinders the facility of its study.

The book opens with a Historical Introduction, in which Dr. Salkowski marks briefly but clearly the principal stages in the history of Private Law among the Romans. So briefly, indeed, are the facts stated that we could often have desired

some fuller statement either of the Professor's own views, or of those which have on some points divided the schools. Thus we find the Paraphrase of Theophilus mentioned as "not without importance for the textual criticism and the interpretation thereof," without any hint of doubts as to how far Theophilus may be looked upon as the actual author of the Paraphrase which has found acceptance under his name. The probabilities are strongest, perhaps, in favour of the so-called Paraphrase of Theophilus having been put together from notes of Lectures taken down by one or more of his hearers. Very likely this may be Dr. Salkowski's view, but it is not expressed, as we should have liked to have found it, were it only *obiter*.

Again, in his brief sketch of the Schools of Roman Law in Western Europe after the severance of the West from Byzantine rule, we do not think that Dr. Salkowski does justice to the early date at which the French Schools are traceable as already in active operation. They seem, indeed, to have preceded the School of Bologna. Thus we have the Law School of Orléans in active operation in the 11th century, earlier than the *floruit* of Placentinus, whom Salkowski calls Placentius, at the School of Montpellier, which appears to take rank as the earliest French Law School in Salkowski's scheme.

In a certain sense, it may perhaps be doubted how far any one School, either in Italy or France, can lay claim to being the first in point of time. We do not suppose that the teaching of Roman Law ever actually died out of Gaul, at least as far as the Southern and South-Western portions, the specially Roman *Provincia*, and Celtiberian Aquitania, are concerned. And the cities, such as Angers, Toul, and Montpellier, where we actually find Schools of Law flourishing, not only in the early days of the revival from the Dark Ages in the 11th century, but even, in the case of Angers, as far back as the 10th century, are just the places

where the influence of Bishop and Clergy would be likely to avail most strongly to keep up an unbroken tradition in favour of the study of Roman Law. And unbroken we are strongly inclined to believe it has been, in Southern Gaul, no less than in Italy. The revived study of Roman Law in the 11th century is, for us, simply a part of the general Revival which incontestably took place at that date throughout Western Europe.

In Neustria it may be that the tradition was broken by the incursions and ultimate settlement of the Danes and Norwegians, but the Norman nation which grew out of the fusion of the Scandinavian and Romanised Frankish elements, certainly received teaching in the Canon Law, through Monastic influences, in the 11th century, as we know by the early reputation of Bec, and of the Italian Jurists and Philosophers, Lanfranc and Anselm, whose fame spread throughout the West. Here we are met by an Italian stream, but it is a stream of Canon Law, and does not affect our contention as to the Civil Law, while it may be remarked that Lanfranc is believed by some writers to have studied at Bologna. How far the rapidity with which the teaching spread may have been due to an innate aptness for the study in the litigious Norman mind, and how far it may have been due to a pre-existing stratum of Law teaching, never quite obliterated even by the rude shocks of the several invasions, seems to us a question open to discussion and which it would not be without interest to discuss, did space and time admit.

As regards Northern Italy, the filiation of the School of Bologna on the School of Ravenna leads us back through the days of Byzantine Exarch and Gothic King step by step to the School of Rome, the natural parent of all Roman Law teaching in the West. Southern Italy, in so far as it remained Byzantine, probably received its teaching from Ravenna. Under the Lombards a conflict of Laws

must have arisen, and the Southern provinces probably got no particular teaching at all. The general revival of studies in the 11th century was practically coincident with the Norman and subsequent Suabian rule, and its chief seats in the South of Italy were the Schools of Naples and Salerno, the latter, as we know, famous chiefly for medicine, while the former was from the first a nursing mother of Law and Philosophy.

To the extent thus briefly indicated, it will be seen that we take a somewhat different view of the history of the teaching of Roman Law in Western Europe from that which appears to be accepted in the summary statement of the subject by Dr. Salkowski. Possibly, if his views had been more fully expressed, we should not have found them differ materially from our own.

The somewhat ironical treatment of Franciscus Accursius as one who "in a rather uncritical and careless manner arranged a compilation of the existing glosses into a new redaction which almost completely superseded the original glosses," seems to reflect the orderly mind of the nineteenth century Professor and critic. But it is perhaps rather hard on the thirteenth century Glossator.

Some of the recent MS. discoveries to which we have alluded contain various readings which are not without interest. Thus, in regard to *Bona vacantia*, where the Digest reads *vacantibus fisco vindicatis*, the Ante-Justinian MS. published by M. Rodolphe Dareste, of the Institute (*Nouv. Rev. Hist. de Droit*, Paris. 1883, pp. 361, *seq.*), reads *populo vindicatis*. M. Esmein, commenting upon this in a subsequent article (*Op. cit.*, 1883, pp. 479, *seq.*), observes that as the reading *populus* is confirmed by two passages, one from Ulpian (XXVIII. 7), the other from Gaius (II. 150), the text of the Digest must be the result of interpolation. But he does not decide whether we should believe that in the time of Papinian and Ulpian, *Bona vacantia* were still considered to fall to the *Ærarium*

and not to the *Fiscus*, or whether those great Jurists were citing the text of the *Lex Julia caducaria*, which had itself come to be inexactly cited. Not the least interesting feature of the fragments—unfortunately some of them are very fragmentary—published by M. Dareste consists in the circumstance that they are evidently portions of a MS. of the Notes of Paulus and Ulpian or Papinian, and therefore may be taken to set forth an earlier state of the Law than that of Justinian's recensions.

Indeed, it seems but reasonable to accept the forcible arguments of M. Esmein, pointing to a date anterior to the Constitution of A.D. 426, by which Theodosius II. and Valentinian III. took away the force of Law from these Notes. It is scarcely probable, M. Esmein urges, that copyists should have taken the trouble to reproduce lengthy Commentaries which were of no practical value because deprived of all authority in the Courts. This common-sense argument appears scarcely to leave any doubt as to the period to which M. Dareste's Fragments should be referred.

There are points on which it would have been interesting to have found an expression of Dr. Salkowski's views in the subjects treated in the Greek Fragments of Roman Law texts, discovered in the Monastery on Mount Sinaï by M. Bernardakis, and of which a text with very brief notes was published by M. Dareste of the Institute in the *Nouv. Rev. Hist. de Droit* (Paris: Larose) for 1880, pp. 643, *seq.*

These Fragments cite both the Gregorian and Hermogenian Codes and the Theodosian Code, a fact which gives M. Dareste a fair basis for dating them in the century between Theodosius and Justinian. They would seem to have been written by a Teacher or Practitioner of Law residing in Egypt, some of the passages containing illustrations of the Law by means of cases at Bubaston. Amongst other minute but noticeable points, we learn from one of the Sinaïtic Fragments that a Latin could not be Atilian

Tutor: *Nam latinus e lege Atilia tutor dari n[on] p[otest]*. The Greek version happens to be more complete, so that there is no doubt as to the reading. The text itself, which refers back to a previous passage enforcing the same doctrine, M. Dareste takes to be from Gaius. From another Fragment we see that the Atilian tutor could neither give up his trust (*abdicare*), nor *in jure cedere*, a point which strikes M. Dareste as being perhaps new. One of the specially valuable features of the Sinaïtic Papyrus is that the Constitutions cited in it, whether from the Theodosian or from the Gregorian Code, are mostly lost. This circumstance leads us the more to regret that we have not the advantage of finding them incorporated in Dr. Salkowski's useful Catena of Texts, or at least cited or noticed in a foot-note. For these modern discoveries, whether their texts be on durable stone or bronze, or on perishable papyrus, are all of some value, and the more perishable the material on which they have been handed down to us, the greater is the need of their embodiment in works of permanent interest like Salkowski's *Private Law*. Once there, they would be ready to hand for reference alike for master and student, and, indeed, in such matters as these Tablets and Papyri most of us are students. The difficulties surrounding the decipherment, whether of Tablets or of Papyri, are very great. The passages preserved are in most cases fragmentary, and their true restitution must frequently be matter of doubt. The attitude of M. Dareste towards the Sinaïtic Papyri is that which should be common to us all in attempting to solve such confessedly hard problems. The very bad state of the MS., the imperfections of the transcript, the confusion of Greek and Latin, the deplorably bad spelling,—and quite probably, from what we have seen of these various fragments, the local corruptions of the language or languages employed,—these and other causes must always tend to make the work of decipherment

one of great difficulty, and of which the general results all the more require to be placed before the student by a master hand.

Among the questions raised by the citations in the Sinaïtic Fragments we may mention the Treatise *De Tutelis*, reference to which is made in stating a case illustrative of the loss of *tutela* by the action of *cap. dem. media.* Two brothers, one of whom is *tutor* of the younger, a minor, are both to be sent to a Latin Colony, and thus suffer loss of *caput.* The *Tutor* brother loses his *tutela.* M. Dareste believes the reference to be to the lost work of Gaius, *De Tutelis.*

On *Impensæ necessariæ* and *voluptariæ in res dotales*, the Fragments also have passages which it might have been of interest to have noted, as offering some novelties in the way of definition, and the system adopted throughout by Dr. Salkowski of placing excerpts from the Jurists immediately after the relative portion of his own text would have lent itself easily to such additional illustrations. This system is a very useful one alike for teacher and student, as we have had occasion to remark when noticing Professor Rivier's valuable *Traité Elémentaire des Successions à cause de Mort en Droit Romain* (Brussels: G. Mayolez. 1878), a work also intended for the student's use. In regard to the difficult question of the translation of Dr. Salkowski's Catena of Roman Law texts, Mr. Whitfield exercises on the whole what seems to us a sound discretion in leaving certain terms untranslated. The difficulty is a really serious one. and we are glad to observe that it has lately received the attention of the Cambridge Philological Society. We feel much in sympathy with the dissatisfaction expressed by Mr. Monro, in the Paper which he devoted to the subject, as to the inadequacy and even erroneousness of conception involved in many of the renderings given alike by Continental and by English Commentators on the Civil Law. To represent *Suus hæres* by " self

successor," as we find it in one of Mr. Monro's examples, is certainly not helpful to the student, and indeed the most natural result of inserting such renderings would seem to us to be a demand for a Commentary explanatory of the renderings, in addition to the Commentary on the text. We therefore quite acquiesce in Mr. Whitfield's retention of such terms as *manus*, *potestas*, *suus hæres*, in the original, where he is translating the texts printed by Dr. Salkowski, if he was to translate them at all, a question on which we should have inclined to differ from him. We are indeed told of the student who is not familiar enough with his Latin to be able to profit by the texts cited, but it would be better, we believe, to leave him to exercise his brain power and his knowledge of Roman Law by translating for himself. We do not much like some of the renderings which Mr. Whitfield supplies, and there is more danger, probably, of the student taking the translation supplied in his text-book as though it were of authority, than of his being rejected in an examination for a translation which shews that he has honestly applied such knowledge as he possesses to the rendering of a given passage. A margin must always be allowed for legitimate variations of rendering, and, as a matter of fact, there will always be passages which probably no two persons would translate in exactly the same words. The real object of an examination, in regard to texts, can only be to ascertain whether the student shews an adequate understanding of the texts set for translation, not (at least in the great majority of cases), whether he uses a particular shibboleth in his rendering. Unquestionably, translations have grown with the growth of examinations in Roman Law.. There are persons who do not scruple to call the multiplication of examinations an evil. It may be a question whether the multiplication of translations of Roman Law texts may not itself be accounted an evil at least as great.

The Roman Law has in its day served many purposes, and it has many yet to serve. *Rerum domini*, wherever the Romans extended their citizenship, they extended their Law, and the extent and the power of this far-reaching influence have even yet perhaps not been fully estimated by us. Continental Jurists have had this influence more constantly and more directly before them, and have consequently paid more attention to a Jurisprudence on which their own actual systems of Law are so much more directly based. We are therefore specially indebted to all among us who, like Mr. Whitfield, devote themselves to the reproduction for our own students of the Treatises of modern Commentators on the Roman Law. The Empires of the East and of the West have faded out of the Map of Europe, but the Novels and the Basilica are still Law in Eastern Europe, and are still administered by the Orthodox Patriarchs and Bishops as the Law of the Church, in the ecclesiastical matters which have been left to their cognisance ever since the Ottoman Sultan took the place of the Roman Emperor in the East. Among the Nations of the West, the abiding influence of the Roman Law is seen alike in the Codes of modern Western States, and in the Canon Law of the Western Church. So true is it still, alike of the Old Rome and of the New Rome, of the seven-hilled city on the Tiber, and of her seven-hilled daughter on the Bosphorus:—
Roma Caput Mundi regit Orbis fræna rotundi.

III.—FOREIGN JURISDICTION IN JAPAN.

WHEN in 1858 the Commercial Treaty between England and Japan was concluded, by which the principal ports of the Empire were opened to British residence and trade, one of the conditions for the future regulation of the intercourse between the two nations was the immunity from native jurisdiction of such British subjects as might go to reside in the newly opened ports, and their subjection to their own authorities only; and a like reservation of authority over their subjects similarly situated was exacted by the other European Powers who, about the same time, also entered into Treaties of Commerce with Japan. This condition was imposed at a time when the country was inaccessible to travellers, and when the temper of its people, as well as the character of its Institutions, were incompatible with security to the lives and property of strangers. A number of territorial nobles, called Daimio, owing allegiance to an Over-Lord known as the Tycoon, or Generalissimo of the Empire, who purported to govern under a nominal Mikado, or Spiritual Emperor, held the country divided into provinces that were practically as distinct and independent as the kingdoms of the Heptarchy. Each Daimio made laws for his own territory, superseding according to his will such of the ancient laws of the Empire as were still recognised by his dependents. He exercised authority over his vassals extending to the execution of capital punishment. He led them in the fierce contests between clans, which were perpetuated from generation to generation. He rewarded his followers with grants of land, which they held in return for military services. He ruled them like a despot, and was never to be seen abroad

unattended by a retinue of armed men. Absolute devotion was rendered to him by vassals who considered obedience to his commands the first article of their moral code. The chief and his followers alike shared a hereditary hostility to all strangers, and if there was one feeling in the country more universal than another, it was the determination to exclude the foreigner from the sacred soil of Japan.

But since the breach made in the policy of isolation by the operation of Treaties of Commerce, a rapid series of unexampled changes has altered the social and political status of the country, and raised it to a comparatively high level of Civilisation. In 1865, the Tycoon was deposed, and the administrative authority which his ancestors had wielded for centuries was restored to the hands of the Mikado. The Mikado, who at first headed a party for the denunciation of foreign intercourse, and the expulsion of the hated foreigner, afterwards adopted and ratified, and has ever since supported, the Treaties. The Feudal organisation, which by the deposition of the Shogun (or Tycoon) had lost its head, was in 1871 swept away, and then the work of building up a centralised Imperial administration was undertaken. The Army, the Navy, the Finances, the Civil Service, were all constructed anew, and in accordance with the changed spirit of the times, the work was more or less fashioned upon the model of the powerful and civilised States with which Japan had been reluctantly brought into contact. Of the reforms effected since the re-establishment of the Imperial authority, those relating to Education and Judicature bear directly on the question involved in the present article. Education has been rendered universal and compulsory, and schools, now established in every district, are spreading the benefits of knowledge and making the average level of Japanese culture equal to that of any European Nation. The

numerous hereditary jurisdictions of the Feudal epoch have been abolished, and a new Judicial system has been established concentrating all jurisdiction in the hands of the Emperor. Under this system Courts of various gradations, open to all comers, and administering the same laws, have been distributed throughout the Empire, and Penal Codes, framed on the model of the Code Napoléon, have taken the place of the ancient laws, whose chief features were their extreme severity, and have substituted for cruel and retaliatory punishments, penalties bearing a due proportion to offences and calculated to secure the future well being of the offender. With a view to raising the standard of the native Tribunals, young men were sent to Europe and America, to study Jurisprudence, in order that they might be fitted to occupy the Judicial seats with credit to the nation; Law schools have been established, where English Law forms part of the course of study, and in the year 1884 Regulations were issued by which only "graduates of the University [of Tokiyo], Counsellors, and those who have passed the prescribed examination," are, "after one year's experience as an attaché to a Court of First Instance, or two years' practice as a Counsellor," declared eligible as Judges. Even the religion of the mass of the people, Buddhism, has, in disestablishment and disendowment, been made to feel the effects of the general movement; and since the withdrawal of Imperial patronage from ceremonies that for ages had been bound up with the Government as one of its component parts, it seems by no means improbable that the Government will openly record its approval of the moral precepts of Christianity by recognising it as the creed of the nation. Apart from the work of the ruling classes, an entire change has come over the spirit of the people themselves. Formerly divided in organisation and interest by the distribution into Feudal Principalities, they are now beginning to feel that sense of

union which is symbolised by the word Nationality. Twenty years ago the idea of inherent rights in the individual or the nation was foreign to the Japanese mind. Such institutions as a Judicature, a Police Force, National Banks, a Periodical Press, a Representative Assembly—all of which (with the exception of the last) are now accomplished facts, —hardly entered into the dreams of the wildest Reformers.

The men who have hitherto guided the revolution, and for the most part still direct its course, were chosen from the party which overthrew Feudalism, and restored to the Sovereign the power as well as the name of the Emperor. They have always been few in number, forming a small group of statesmen conspicuous for their energy and enlightenment, and it is to their abilities, as much as to any social and mental development in the nation, that the enjoyment of freedom, peace and prosperity to an extent never before known in Japan, and the rapid and steady march of the country towards its proper place in the political world, are attributable. The form which the Government has from time to time assumed has been far removed from that of any European ideal, but it took shape from the peculiar condition of the country, and it is open to question whether any theoretically more perfect form of government would have proved equally successful in attaining what has been accomplished. The tendency of the ruling body has been a gradual approach to Constitutional Government. Following immediately upon the Restoration, an adaptation of the system of government that prevailed before the rise of Feudalism was resorted to, and the Mikado became an Absolute Sovereign, delegating his powers to a Chancellor, who sat at the head of a Council of State of Imperial nomination. The Mikado still continued to live in the seclusion upon which the popular belief in his semi-divinity was built, but this *rôle*, proving inconsistent with the altered state of things, was soon abandoned and he

ceased any longer to be regarded as a being clothed in mystery. The anomaly of a Chancellor, or Regent, with delegated Imperial authority, and a visible Emperor, combined with the character and tendencies of several of the members of the Council, resulted in an early practical encroachment on the theory that the whole power of Government was absolutely vested in the hands of the Sovereign, and in the transfer to an Oligarchy of no inconsiderable portion of it. A further inroad on the same theory was made in the year 1881, when, in response to a popular agitation in its favour, the right of the nation to administer its own affairs and to be consulted in the selection of its administrators, was formally acknowledged by an Imperial Decree which promised to put the people in possession of political rights in the year 1890. This again was followed in the month of December last by another Decree, remodelling the Government, and bringing the theory, so far as Legislation is concerned, into conformity with the practice; a proceeding which derives its importance less from its immediate practical consequences than from its public recognition of the principle of Constitutional restrictions on the Imperial authority.

It should cause little surprise that a people who have within the last generation taken so many steps in the path that leads to Civilisation, should have become impatient under, and should be seeking the abrogation of an engagement which restricts their authority over every inhabitant of the country, and brands their Institutions as being still unfit for the foreigner to live under. So detrimental to the name of "Modern Japan," and so needless for the foreigner's security, is Extra-Territorial jurisdiction supposed to be, that to bring about its extinction and to effect a transfer to the native Courts of the Judicial authority exercised by the various Consular Judges, is now a central object of the national policy. Allowing

that the circumstances of the time may have justified the imposition of Extra-Territoriality in 1858, Japan refers to her history during the last quarter of a century, and contends that the *raison d'être* of the exaction has long since disappeared. She contrasts the anarchy that prevailed, the uncontrolled power of the nobles, the turbulence of a population that habitually carried arms in their hands, their exclusive temper, the multifarious jurisdictions, and the generally backward condition of her Institutions—all characteristic of pre-Treaty times—with the national unity that now exists, the present reality of Imperial power and authority throughout the whole of the land, the likeness of its Institutions to those of Europe, the introduction and popularity of railway, postal, and telegraphic systems, the presence of an influential middle class, interested in the maintenance of the industries and the foreign commercial relations which formed them, the extension of education, the peaceable and industrial character of the people, an informed Public Opinion, never lagging behind the spirit of Reform in the rulers, and especially with the new and enlightened Legislative provisions that exist for securing personal rights and freedom. She reminds foreign Powers of her strict observance of Treaty obligations, that the foreign Communities in the open ports have for years lived in security and undisturbed under no other protection than that afforded by the authority of the Japanese Government; that travellers in the interior (to whom permission to go beyond Treaty limits has been freely granted), have at all times enjoyed a perfect immunity from danger, that foreigners even now freely resort to the Courts of the country in all proceedings in which natives are defendants, and that already the European and American Powers have abandoned in favour of Japan, and with unqualified satisfaction to themselves, the conduct of their postal business within the Empire. Looking at the Courts erected for the exercise

of the reserved jurisdiction, she complains (1) that they are not efficient. Out of 17 such Courts in Yokohama, 16 are presided over by 12 Consuls, of whom 5 are merchants, and all amateur justices; and an appeal from these insufficiently equipped tribunals lies only to the countries of their origin—a proceeding involving such delay and expense as practically to constitute the local decision final: (2) that the system of several Consular Courts is at its best defective to secure a full and just administration of justice. The want of power in a Consul to compel the presence of one of his own nationality as a witness in the Consular Court of another nation, or in a Japanese Court, the freedom from punishment of a witness whose false testimony has been sworn before a foreign tribunal, the difficulties in suing a firm whose members are not all of the same nationality, the obstacles to enforcing execution in such and similar cases, and conflicts of opinion in questions of jurisdiction between subjects of different foreign nations, are instances adduced in proof of the defectiveness of the system; and (3) that the privilege of Extra-Territorial jurisdiction has been strained to mean that foreign residents are not only amenable solely to their own Courts, but that they are exempted from any recognition of native laws, even in the matter of police or municipal regulations, not submitted to and accepted as part of their own laws by the respective foreign Governments. And it is asserted that these three causes of complaint, and more particularly the last, are injurious to the character and success of the internal administration of the country.

The foreign residents on the other hand contend that the concession demanded is still premature. They readily acknowledge that progress has been made in the social and political condition of the country beyond what anyone could have ventured to predict; but, they urge that a Political reconstruction, however thorough, and Legislation

more far reaching than that of Japan during the last two decades, will not, in the course of one generation, entirely change national character and habits, and that Japan is no exception to the rule. They represent that the customs and traditions of years not very distant still exercise a dominion over the present generation, unfavourable to a free and full enjoyment of personal rights and liberty. The new Penal Codes which came into force so recently as the year 1882, they say, are not in harmony with, but are greatly in advance of, the laws and usages previously in force, and of the temperament of the people. The Judicial continuity of the nation was broken by the substitution of these humane and enlightened Codes for the arbitrary and cruel practices towards offenders in previous times, and the rift will be deepened by the proposed enactment of a Civil and Commercial Code, annulling such customs as now form the national laws, and replacing uncertainty by laws patent to all, and definite forms capable only of impartial treatment. They think it not unreasonable to suppose that even were the Judges familiar with the spirit and working of such Codes, the promptings of habit will unconsciously prevail in the minds of Judicial and other officers born and bred under the old dispensation. The state of the Laws, too, is pointed out to be glaringly imperfect, and the administration of them defective. The new Penal Codes they do not find altogether beyond criticism. The prohibition of cross-examination of witnesses by the prisoner's Counsel, and the removal of the accused during the reception of testimony against him, at the discretion of the Judge, are viewed as blemishes difficult to be accounted for in Codes otherwise open to praise only. The absence, moreover, of direct provision for a public trial, in a country where secrecy has so long characterised its proceedings, is deemed worthy of notice, even if it is intended, as by the

new practice it seems to be, that publicity shall constitute one of the main features of the administration of the new system. The Civil and Commercial Codes, believed to be in course of preparation, have not yet seen the light of day, and until their enactment, all business relations, family matters, and questions outside the scope of the Penal Codes, are regulated in accordance with numerous uncollected and unarranged notifications issued from time to time within the last few years, with usages which are frequently uncertain, and not seldom obnoxious to foreign ideas, and where these are wanting, in accordance with the presiding Judge's sense of right. The distrust of native Judges, whom, in their early experience of them, foreigners allege to have been notoriously partial, has not yet been altogether removed. Until quite recently, the Bench was occupied by persons having no pretensions to a knowledge of Law and Procedure, and the body was not unfrequently recruited from the discharged employés of other branches of the Civil Service. The steps taken towards a remedy for this evil, the most important and recent of which was the publication in 1884 of Rules requiring for the first time some qualification for the office, are still insufficient to ensure the presence on the Bench of the required knowledge, and while granting that Judges of the inferior type which was at one time thought sufficient, are disappearing, and that there are now to be found some holding the office who are competent to exercise responsible Judicial functions, the Foreign community declares that it is altogether erroneous to suppose that the Judges of Japan are capable, without proving a fruitful source of altercation and discontent, of assuming uncontrolled jurisdiction over any European. Another objection offered to the jurisdiction of native Courts is that Law is not supreme in the Country, and that the Judicature is not independent of the Executive. The present form of Government is

that of a Monarchy, with the Sovereign's power controlled by a Cabinet, whose consent is necessary for all legislation; but the limitation is counteracted by the facts that the Emperor now personally presides in the Cabinet, and that both the appointment and removal of the officers of State are vested in his hands. The Cabinet is composed of a Prime Minister and the heads of nine Executive Departments, formed on the model of the Executive Ministry of France under Napoleon III., and its chief feature consists in the extended power of the Prime Minister—without his assent no legislation can take effect: he is the intermediary between the Emperor and the other Ministers, and for the purpose of ensuring their harmonious working, he is entrusted with the supervision of the different Executive Departments, a burden of no ordinary weight, temporarily undertaken with a view to preparing the building on which the coming Constitution will rest. The suitability of this form of Government to the transitional state of the country is not denied by the aliens residing in Japan, any more than the greatness of the work which it has taken in hand, but when it is proposed to substitute such a polity for the protection of their own Governments, they object to it on the ground that its structure is inconsistent with the supremacy of Law. The laws and the protection they afford are viewed as enjoyable only at the will of an Emperor who can select and dismiss his Ministers at pleasure, or of a Cabinet in no way answerable to the Nation, or of both; and the subject's sole security is dependent upon the wisdom and goodness of the Sovereign, or the constitution, so as to be favourable to a just administration, of a Cabinet liable to change in its construction, and consequently its policy, at any moment.

With regard to the connection of the Judicature and Executive, the tenure of office of the Judges is considered too precarious to ensure independence, for although they

are appointed, and receive their emoluments, "during good behaviour," the paymaster, and the interpreter of the behaviour, is a Government which is above the Law. The enactment of rights and liberties is looked upon as a thing of little avail, if at the same time there is not conceded to the officers set aside for the purpose, the necessary power and independence to prevent an infringement of them, even at the instance of the Government itself. The new Criminal Codes may confer benefits similar to those enjoyed by Englishmen under the *Habeas Corpus*, but the foreigner looks in vain for the means of rendering these benefits sure, and on which alone the value of the possession depends. In the power entrusted to a Council formed in the year 1881, called the Sanji-in, to hear and determine cases relating to the administration, he saw the authority of the ordinary Law and Courts set on one side on occasions when, having suffered wrong at the hands of a Government officer, one had to seek his remedy in a special Court where he might be met with and silenced by a plea of "superior orders."* Narrow restrictions are imposed by Press Laws on discussions of a political nature, while the supervision of all published utterances is entrusted to Provincial Governors, and in this curtailment of the freedom of the Press the alien resident discovers the removal of a powerful instrument of protection against arbitrary treatment, to which he attaches much importance because of an alleged proneness on the part of native officials to high-handedness in their dealings with the stranger. He demurs, also, to a surrender of privileges, the abandonment of which would imply so unaccustomed a restraint upon his expression of opinion. Alluding to the criticisms of the Consular Courts, the British Community, which preponderates in number over all the others, and whose commercial interest includes

* This body was abolished, and its functions transferred to the Cabinet in December last, when the Government was reconstituted.

nearly half the whole import trade, and three-fourths of the foreign carrying trade, maintain that *their* Courts are not open to the charge of inefficiency brought against the Consular Courts in general. In addition to Consular Courts in all the open ports, their Government has erected in Yokohama a Superior Court, suitably furnished in every particular, and presided over by a Judge who is a trained lawyer of ability and experience. This Court possesses not only original jurisdiction but is a Court of Appeal from the Consular Courts, and its decisions are subject to review by the Supreme Court in Shanghai, of which it is a branch. The Consuls at the open ports are all men of education, and most of them have prepared themselves for the discharge of their Judicial duties by a study of Law in one or other of the Inns of Court. The other communities deem that their smaller interest does not warrant the formation of Superior Courts, and hold that such tribunals as they possess affect only or almost only their own subjects, who prefer them to the authority of native Courts as now existing. The imperfection of a system of Consular Courts, each independent of the other, is acknowledged to be indisputable, but the experience of its imperfection is claimed to be almost entirely confined to the members of the Foreign Community, who submit to it until the proposed substitution of native Courts is surrounded with sufficient guarantees to render them acceptable. The third complaint owes its origin to the fact that native regulations relating to Police matters, to Quarantine, the killing of game, &c., have not been recognised as binding on foreigners unless and until they were sanctioned by their Governments, none of whose representatives on the spot, except the British Minister, has the power of approving and giving force to such regulations. It is admitted that delays in the adoption of reasonable bye-laws caused by reference to Governments at a distance, or a want of concert in the adoption of them,

might work serious injury to Japan, especially in the case of Quarantine regulations, where the shipping is for the most part in the hands of foreigners, but it is urged that in practice the inconvenience is reduced to a minimum, and there is no half-way house between the course pursued, and one that would amount to a surrender of Extra-Territoriality, and for the latter step—owing to no fault but that of Japan itself—the time has not yet come. Whether the Extra-Territorial clauses signify, as the Foreign Powers (with the exception, in a modified form, of the United States of America) have interpreted them, that the Laws of their respective nations exclusively are binding on their subjects resident in Japan, or, as the Japanese Government contend, that foreign Judges are to administer Japanese laws to a greater or less extent or not, is, from the circumstances that have hitherto existed, a question of academic value only. In regard to crimes committed by British subjects against Japanese subjects, or the subjects of any other country, the Treaty in express terms stipulates for the trial and punishment of the offenders "according to the laws of Great Britain," just in the same way that it provides for the punishment of Japanese subjects guilty of criminal acts towards British subjects "according to the laws of Japan;" but in reference to the laws applicable to questions not criminal, and upon which the Treaty is silent, the force of circumstances at the time when the Consular Courts were established precluded, and to a less extent still shuts out, the possibility of the Japanese construction being admitted. From the character of some of their customs, from the uncertainty of others, from the want of any written or recognised law in Civil and Commercial matters, and from the power of control over the exercise of Foreign jurisdiction which the native enactment of laws to be administered in the Consular Courts would imply, exemption from all the laws of the country has

formed, in practical experience, an incident inseparable from the exercise of Foreign jurisdiction in Japan.

Finding the views of foreigners relative to its preparedness to undertake absolute jurisdiction over them, so opposed to its own, and ascertaining that these views are shared or supported by their Governments, the Japanese Government has expressed a readiness to open the whole of the country to foreign residence and trade, and to erect, in return for an immediate surrender of Extra-Territorial privileges, and until the completion of her Judicial structure, Mixed Courts composed of Judges partly native, and for the more part foreign, who should determine all questions affecting foreigners according to the new Penal and proposed new Civil and Commercial Codes. Whether such tribunals will be accepted will depend entirely upon their constitution so as to guard against the objections to the present native administration of Justice; and as soon as a constitution which shall include the independence and authority of the foreign Judicial element is agreed upon, and some obstacles are removed whose removal it will still take some time to clear away, this plan of bridging the gap between the abolition of the Consular Courts and the entire renunciation of foreign Judicial interference in the country, will doubtless be adopted as affording the necessary guarantee of protection to foreigners during the period of transition.

The realisation of this scheme, however, even were the constitution of the Courts agreed upon, must be delayed until the laws to be administered in them are known to and approved by the Powers relinquishing their privileges. The Penal Codes have been before the world since 1882, and, taken as a whole, are recognised as being in no way behind similar European bodies of Law, but, as has already been mentioned, there is at the present time no body of Civil and Commercial Laws worthy of the name, and thus the new

Courts, which would be of a comparatively permanent nature would, if established now, be left without guidance in, it may be safely said, ninety per cent. of the causes coming before them. Another hindrance is to be found in the fact that negotiations relative to any Treaty amendment have to be conducted not with one Power only, but with seventeen Governments, who, although unable to reconcile their respective interests and to unite in agreeing to any proposition, have hitherto shewn an unwillingness to break the concert which has up till now attended their dealings with Japan. This difficulty might have been overcome by the erection of efficient Mixed Courts, and by opening the whole country, and granting privileges to the subjects of each nation only which gave up its Extra-Territorial privileges, and submitted its interests to the new Courts, leaving the others to come in at their leisure; but from this method Japan shrank, upon its being mooted that the "most favoured nation" clause was susceptible of the construction that all benefits accorded to one nation, however limited by conditions or accompanied by obligations, are enjoyable in their fulness by the other Powers altogether irrespectively of their attendant limitations. Having exhausted every means, and no general understanding having been found possible, Japan now seeks escape from the situation by disregarding the suggested interpretation of the favoured nation clause, and by concluding, if possible, a separate agreement with Great Britain on terms likely to be acceptable to the other Treaty nations. Japan might fairly have looked for such an expression of England's friendship and hoped for the favourable results likely to follow her example, had her own Legislature been more active in supplying the uniform system of law necessary to take the place of the various foreign systems which must cease to be in force on the abolition of the foreign Courts.

But although there are causes which necessarily postpone

the immediate adoption of any scheme involving the abolition of the Consular Courts, there are to be found in the general desire to partake of the benefits likely to attend the opening of the country, suggestions for an intermediate plan which would form an amicable approximation to the desire of the Japanese Government without exciting the apprehensions of foreign residents, and against which the retarding causes already referred to need not operate. In 1868 the relative positions of Turkey and the European Powers were not unlike those of Japan and the same powers to-day. In that year foreigners were by a Rescript of the Sultan, "admitted on the same footing as Ottoman subjects and without other condition to the right of holding urban and rural property throughout the Turkish Empire." Following this precedent, Japan might in a similar manner extend to foreigners the right to hold real property outside the present Treaty limits, and every one taking advantage of such a provision would become amenable to native Courts so far as such property was concerned, and would hold it subject to the taxation and the laws and customs affecting the enjoyment and alienation of all similar property in the country. This concession on the part of Japan might be simultaneously accompanied by an agreement for opening the whole of the country to foreign trade and residence, and for an extension to Japan of jurisdiction over foreigners such as the following: —Whatever original jurisdiction may be devolved upon native magistrates, the power of control, revision, and appeal should be reserved for a Court composed of Judges of whom a majority should be foreigners, selected and appointed so as to ensure their authority and independence, but, subject to this control, all foreign residents and traders in the interior might be reasonably expected to relinquish their immunity from taxation, to conform to the new Penal Codes after they shall have been approved by their

Governments, and to all reasonable police and administrative regulations; to become amenable to Native Courts in respect of all offences punishable by fine, and of all questions of rights of property, whether as plaintiffs or defendants, where the cause of action has arisen outside the open ports, and where the subject matter in dispute does not exceed in value 5,000 *yen* (about £1,000), unless, when it exceeds that amount, they have consented in writing to the jurisdiction of a native Tribunal; but in respect of all offences punishable *by imprisonment or otherwise than by fine*, and of all suits in which they shall be defendants arising beyond the present limits, where the subject matter exceeds 5,000 *yen*, and they have not consented in writing to native jurisdiction, they shall remain amenable to the Courts of their own country only. Provision should be made for the inalienable right of appeal, and the suspension of execution pending appeal, for publicity of hearing, the right of defence, efficient interpreting and the inviolability of dwellings. The existing Supreme Court in Tokiyo (the *Daishin-in*), supplemented by foreign Judges administering justice in Criminal matters in accordance with the new Penal Codes, and in other questions according to the principles of the laws of Contract in force in all civilised countries, might readily be converted into the necessary Court of Appeal, for the purpose of the suggested experiment.

Such an arrangement would leave untouched the authority of the Consular Courts within the ports now open; it would relax the terms of foreign intercourse by an extension to Japan of the coveted jurisdiction within a new sphere where foreigners became amenable to it only by accepting new privileges; it would provide in a Court of Appeal, constructed so as to be acceptable to foreigners, a safeguard against miscarriage of justice; it would avoid altogether the question of tariffs, which recently obstructed negotiations for Treaty revision, and it would constitute

a definite step on the road first to the erection of a number of Mixed Courts as a substitute for Consular Courts and eventually to the renunciation of all foreign action in the Judicial affairs of the country.

Should the difficulty already referred to of concluding any arrangement with *all* the powers continue, it is conceived that a definite proposition of the character indicated would carry with it a right to consideration with a view to independent action on the part of the Government to which it is submitted. The conclusion of this or any other arrangement with one Power only, does not avoid the risk already referred to as arising out of the Treaty stipulation that each foreign Power " will be allowed free and equal participation in all privileges and advantages that may be granted by Japan to the Government or subjects of any other nation;" but Japan is not likely to pass the existing conjuncture if she is not indifferent to the extraordinary sense sought to be affixed to this clause, until the unlikely event shall arise of a nation refusing to join in an agreement made with others, and at the same time seriously seeking to partake of the new privileges without their corresponding obligations.

G. PARKER NESS.

IV.—FOREIGN MARITIME LAWS.

II.—ITALY. CODE OF COMMERCE. Book II. Title IV.

The Contract of Affreightment.

Ch. I.

General Provisions.

Art. 547. The Contract of Affreightment [*noleggio*] must be in writing.

The document must state:—

(1.) The name, nationality and capacity of the ship.

(2.) The name and surname of the charterer and of the person letting the ship.

(3.) The name and surname of the captain or master.

(4.) The place and time agreed on for loading and discharging.

(5.) The freight [*nolo*].

(6.) Whether the charter-party applies to the whole ship or a part of it.

(7.) The compensation agreed on for demurrage [*ritardo*].

The provision that it should be in writing is not necessary where the charter relates to the vessels or voyages mentioned in Article 501.

F. 273, H. 455, P. 1499, 1500, R. 1005, 1010, 1011, S. 737, 738, Sw. 73 Diff., E. 90.

M. and P. 289—292; News. § 37; Macl. 322.

548. A change of the captain or master mentioned in the document, even if the consequence of his discharge by the owners of the ship, does not operate to set aside the terms of the charter unless it has been so agreed.

Cf. S. 86.

M.S.A. 1854, § 263 (1). Consignee, if present, must consent to change of master by Naval Court, M. and P. 119, 120; Macl. 158.

549. If the time for loading or discharging is not mentioned in the charter, it is regulated by the custom of the port.

F. 274, Id., G. 569, H. 457, 458, N. 44, P. 1502, 1503, S. 744, Sw. 77—79, E. 91.

Fowler v. *Knoop*, 4 Q.B.D. 299, a "reasonable" time. *Wright* v. *New Zealand Shipping Co.*, 40 L.T. Rep., N.S. 413. News. §§ 40, 73; Macl. 488.

550. If the charter-party is by the month or other term, and if the time from which freight counts is not agreed on, it runs from the day on which the loading of goods to be carried commences until they are discharged at the port of destination.

F. 275 Diff., G. 568, 623, H. 463, P. 1508, S. 782, 783, E. 93.

M. and P. 293; Macl. 423, 451, 458.

551. If trade with the place to which the vessel is bound is stopped before she sails by a Government [*Potenza*], the contract is dissolved, and neither party is liable for damages.

The shipper must bear the expenses of loading and discharging.

Cf. B. 90, F. 276, G. 631, H. 499, N. 51, S. 768, 769, Sw. 118, E. 94.

M. and P. 324; News. § 46; Macl. 516, 517.

552. If the sailing of the vessel or the progress of the voyage is delayed for a time by accident or circumstances beyond the control of the parties, the contract still subsists, and there is no claim for increase of freight or damages in consequence of the delay.

The shipper can have his goods discharged during the detention at his own expense, on condition of reloading them or indemnifying the captain, but he must give bail for the performance of the obligation.

Cf. B. 84—86, F. 277, 278, 300, G. 623, 631, 636—639, H. 505, R. 1026, S. 769, 770, Sw. 114, 121, E. 95, 96.

M. and P. 319, 322, 325, 352, 409 Diff.; News. §§ 46, 65; Macl. 358, 399, 418, 488.

553. If the port to which the ship is bound is blockaded, or if any other accident or circumstance beyond the con-

trol of the parties prevents the ship from entering the port, the captain must, if he has received no orders, or if it is impossible to carry out the orders he has received, do what is best for the interests of the shipper, whether by going to some neighbouring port or by returning to the port from which he sailed.

Cf. B. 92, F. 279, 299, G. 631, 636, H. 370, 504, S. 773, 780, Sw. 45, 119, E. 97.

M. and P. 331, 352; News. § 47; Macl. 542.

554. The provisions of Art. 415 are applicable to charter-parties.

ART. 415. Payment of carriage and receipt of the articles carried, even when payment has been made in advance, extinguish all rights of action against the carrier.

Nevertheless, a right of action against the carrier remains after payment of carriage and receipt of the things carried, for a partial loss, or for damages which were not visible at the time of delivery, if it is proved that the loss or damage was sustained in the interval between the delivery to the carrier and delivery by him, and provided that a demand to substantiate the allegation of damage be made as soon as the damage is discovered, and at latest seven days after receipt of the goods.

B. Bk. I. 105, F. 105.

CH. II.

Bills of Lading.

555. A bill of lading [*Polizza di Carico*] must express the nature, species, quality and quantity, of the goods shipped.

It must be dated, and must state:—

(1.) The name and residence of the shipper.

(2.) The name and residence of the consignee.

(3.) The name and surname of the captain or master.

(4.) The name, nationality and capacity of the ship.

(5.) The place from which she sails and that to which she is bound.

(6.) The freight.

The bill of lading must have the marks and numbers of goods shipped noted in its margin. It may be drawn either to order or to bearer, and in the former case the form and results of an endorsement are regulated according to the rules laid down in Book I., Title X.* A bill of lading cannot be signed by the captain before the goods are landed.

Cf. B. 40, F. 281, G. 645, 646, H. 507, 508, N. 56, P. 1553, 1554, S. 799, 802, Sw. 96, E. 99.

M. and P. 338, 339, 344; News. §§ 48, 50, 22; Macl. 366, 371, 372.

556. A bill of lading is drawn in quadruple originals for the captain, owner or manager [*armatore*] of the ship, the shipper, and the consignee respectively.

Each original must point out for whom it is intended.

If the shipper requires one or more copies of the original

* Bk. I., Tit. X. *Bills of Exchange and Cheques*, c. i., § ii. *Of Indorsement.*

ART. 256. An indorsement [*girata*] transfers the property in a bill of exchange [*cambiale*] and all rights inherent thereto.

Indorsers are liable *in solido* to accept and pay a bill of exchange when due.

257. If the drawer, bearer, or indorser prohibits the transfer of a bill of exchange (*i.e.*, renders it not negotiable), by indorsing it "*non all'ordine*" (not to order) or with an equivalent expression, indorsements made in the face of such prohibition only produce the effects of a surrender of the bill as against the person making the special indorsement.

258. The indorsement must be written on the bill, and dated and signed by the indorser. It is valid even if the indorser [*girante*] writes his name and surname only or his firm name [*ditta*] on the back of the document.

Every bearer has a right to fill in indorsements in blank [*girate in bianco*].

259. An indorsement accompanied by the words "*per procura*" (by procuration for), "*per incasso*," "*per mandato*" (by order of), "*valuta in garantìa*," or their equivalents, does not pass the property in the bill of exchange, but authorises the indorser [*giratario*] to demand payment, to protest it, and to sue upon it, and also to indorse it by procuration [*girarla per procura*].

If the indorsement is accompanied by the words "*senza garantìa*," or their equivalent, the indorser does not contract the liabilities pertaining to bills of exchange.

260. The indorsement of a bill of exchange, when overdue, only has the effect of a surrender [*cessione*] of the bill.

intended for the consignee, the regulations of Arts. 277 and 278 apply to such copies.*

The original bills for the captain and shipowner are signed by the shipper, the others by the captain.

The bills should be signed and exchanged within 24 hours of the completion of the loading.

The shipper should within the same time furnish the captain with clearances for the goods shipped and receipts or acceptance of bail for Custom-house duties.

Cf. B. 41, F. 282, G. 644, H. 471, 509, 510, P. 1518, R. 925, 926, 1013 Diff., S. 800, Sw. 95, E. 100.

M. and P. 338—345; News. § 53; Macl. 366.

557. The captain must deliver the cargo to the person presenting a bill of lading, whatever number it bears, unless he has received notice of any adverse claim.

In the event of adverse claims, or if bills of lading are presented by several persons, the captain must deposit the cargo under Judicial authority, and may then be authorised to sell the necessary quantity of it for his freight.

Cf. B. 43, 44, F. 284, G. 647, 648, 651, H. 515—518 Diff., N. 63—65, R. 1027, S. 803, 804, Sw. 97, 98.

M. and P. 321, 322, 154, 359; News. § 53; Macl. 403.

558. A bill of lading drawn up in the form described above is binding in law between all persons concerned in the cargo and between them and assurers.

B. 42 Id., F. 283 Id., G. 653, 888—890, H. 512, S. 807, Sw. 100 Diff., E. 101.

M. and P. 343 Diff.; Macl. 348 Diff.

559. If there is a variance between bills of lading of the same cargo, the captain's is binding if filled up by the

* 277. The acceptor [*prenditore*] of a bill of exchange, has a right to obtain one or more duplicates from the drawer or bearer.

Every bearer of a bill of exchange has the same right with respect to the person indorsing the bill to him, and, through previous indorsers, with respect to the drawer [*traente*] or person putting the bill in circulation [*emittente*].

278. Each duplicate must be a precise copy of the bill of exchange except the difference of "*prima*," "*seconda*," &c. Failing this difference the duplicates are deemed to be distinct bills of exchange.

shipper or his agent, and that presented by the shipper or consignee is binding if filled up by the captain.

Cf. B. 43, F. 284, H. 515 Diff., N. 63, 64, R. 1014, S. 740—743, 801, Sw. 101 Diff., E. 102.

560. The agent or consignee who receives goods mentioned in a bill of lading or charter-party, is bound to give the captain a receipt when required, under penalty of paying the expenses incurred and damages, including demurrage.

B. 46 Id., F. 285 Id., G. 652, Sw. 99, E. 103.

M. and P. 150; Macl. 404, 418.

CH. III.

Freight.

561. Freight [*nolo*] is settled by the agreements of the persons concerned and proved by the charter-party or bill of lading. Freight may be agreed on for the whole or a portion of a vessel, for one or more voyages, or for a term, for the carriage of specified articles, or by the number, weight, or size of the articles to be carried.

Cf. B. 70, F. 286, H. 453, 460, 461, P. 1498, 1506, E. 104.

M. and P. 62, 362; News. § 74; Macl. 421—424.

562. A captain who states his vessel to be of greater or less capacity than is the fact is liable in damages to the charterer. He is not deemed to have made an erroneous statement if the difference does not exceed $\frac{1}{20}$, or if the statement agrees with the ship's register.

B. 73, 74, margin of error $\frac{1}{40}$, F. 289, 290 do., H. 459 do., P. 1504 do., R. 1017 Diff., S. 746, 747, $\frac{1}{30}$, Sw. 76, $\frac{1}{20}$, E. 109—3 per cent.

M. and P. 298; News. § 41; Macl. 346.

563. If the whole ship is chartered, and the charterer does not load a full cargo, the captain cannot ship other goods without the charterer's consent, the latter profits by the freight of the goods which complete the cargo.

Cf. B. 72, 75, F. 287, 288, G. 579, H. 456, 464—466 Diff., P. 1513 Diff., R. 1032 Diff., Sw. 87 Diff., E. 105.

M. and P. 298, 313; News. §§ 41, 42; Macl. 348, 349, 415. *Morris* v. *Levison*, 1 C.P.D. 155.

564. A charterer who, before the vessel sails and before he has loaded anything, announces his determination to break up the voyage, must pay half freight. If he has not announced his determination to break up the voyage, or if he loads less than the agreed cargo, he must pay freight in full.

If he loads more than agreed on he must pay freight on the excess at the rate of freight agreed on.

Cf. B. 75, F. 288, G. 581, H. 464, 467, 469, N. 46, P. 1509, 1510, 1512, 1514, S. 760, 764, Sw. 87, E. 106–108.

M. and P. 298, 313, 329 Diff.; News. § 75; Macl. 419, 444.

565. If the charter-party is for the carriage of specified goods, the shipper may withdraw the articles he has loaded before the ship sails on paying half freight. He bears the expense of loading and unloading and of reloading other goods which require to be moved, and also pays demurrage.

Cf. B. 75, 87, F. 288, 291, G. 563, 581, 582, H. 473 Diff., P. 1520 Diff., S. 765, Sw. 90, 91 Diff.; E. 110, 111.

M. and P. 319 Diff.; News. § 42 Diff.; Macl. 419.

566. The captain may land goods found on board and which have not been declared to him at the place of shipment, or he may exact freight for them at the maximum rate paid at the place for similar goods.

B. 88, Id., F. 292, G. 565, H. 477, R. 1033 Diff., S. 761, Sw. 83, E. 112.

Macl. 388, 428.

567. A shipper who withdraws his goods in the course of the voyage must pay freight in full, and all expenses of moving other goods caused by the unloading of his own. If the goods are withdrawn on account of the acts or defaults of the captain he is answerable for damages and expenses.

B. 89, Id., F. 293, Id., G. 583, 584, 590 Diff.; H. 511, S. 774, 775, 792, Sw. 91, E. 112.

Macl. 418.

568. If the ship is delayed on sailing, in the course of the voyage, or at the port of discharge by the Charterer's act, he is liable for demurrage.

If a vessel chartered out and home returns empty, or with an incomplete cargo, full freight is due and demurrage in addition.

B. 82, Id., F. 294, Id. G. 582—584, H. 474, N. 48, P. 1521, R. 1029—1031, Sw. 89, 120, E. 113.

Macl. 419, 443, 488, 489.

569. The captain is liable to pay damages to the charterer, if the ship is stopped or delayed by his (the captain's) act on her departure, in the course of the voyage, or at the port of discharge.

B. 83, Id., F. 295, H. 475, N. 42, P. 1522, R. 1021, Sw. 93, 120, E. 114.

Macl. 463, 489.

570. If the captain is compelled by an accident, or by circumstances beyond his control, to repair the vessel in the course of the voyage, the Charterer is bound to wait or pay full freight. If the vessel cannot be repaired, freight is due in proportion to the amount of the voyage completed.

If the captain charters another vessel to carry the goods to their destination, the new charter is deemed to be made for the account of the shipper.

Cf. B. 85, 94, 97, F. 296, Id., G. 633, 640, H. 478, N. 58, 59, P. 1525, R. 1022 Diff., S. 777, Sw. 114, E. 115.

News. §§ 65, 78, 79; Macl. 399 (*pro ratâ itineris peractâ*).

571. The captain loses his freight, and is liable in damages to the Charterer, if the latter proves that the vessel was unseaworthy when she sailed. This may be proved even in contradiction to the official reports of survey.

B. 95, Id., F. 297, Id., G. 560, H. 479, N. 65, P. 1526, R. 1016, S. 779, Sw. 40, E. 116.

News. § 61; Macl. 347, 380, 381.

572. If trade with the country to which the ship is on a voyage is interdicted, full freight is due to the captain, even if he is obliged to bring back his cargo to the port whence he sailed. But if the ship is chartered "out and home," half the entire freight or of the two freights put together is due.

Cf. B. 91, P. 299, G. 636, H. 504, P. 1549, S. 771, 772, Sw. 5, 119, E. 118.

News. § 47; Macl. 520.

573. If a vessel is chartered to go to a port and there load a cargo and carry it to another port, and trade is prohibited whilst the vessel is proceeding in ballast to the loading port, the captain is entitled to compensation for the expenses incurred in executing the contract, the amount of which depends on the circumstances of the case.

Cf. G. 584, 642, H. 503, P. 1548, Sw. 119.
Macl. 520.

574. If the vessel be placed under embargo during its voyage by any Government, or compelled to stay in port to repair damages, even such as have been sustained voluntarily for the general benefit, no freight is due during the detention or embargo in port if the vessel is chartered by the month, nor any increase of freight if chartered for the voyage.

B. 85, 94, F. 296, 300, G. 623, 636, 637, 639, 640, H. 505, P. 1550, 1551, Sw. 114, 121, E. 115, 119.
News. § 46; Macl. 516.

575. Freight is due for cargo which the captain has been compelled to sell, or pledge, or use for the vessel's pressing necessities. He must meanwhile repay the owners the value of the goods at the place where they would have been discharged, if the ship arrives in safety.

If the vessel is lost, the captain must repay to the owners of goods which he has sold or made use of the price they fetched, and for those which he has pledged, the amount borrowed on them, deducting the freight stated in the bill of lading. In both these cases the shipowners retain their right of abandoning the vessel. When a loss results from the exercise of this right to those whose goods have been made use of, sold, or pledged, the loss is apportioned on the value of, and contributed to by, such goods and all the others which reach their destination, or are saved from shipwreck, subsequent to the occurrence of the perils of the sea which rendered the using, sale, or pledging necessary.

Cf. B. 93, F. 298, G. 612, 613, H. 480, N. 66, P. 1527, S. 785, Sw. 112, E. 117.
News. § 78; Macl. 147, 409.

576. The captain has a right to freight on goods jettisoned for the good of the whole adventure when their claim to contribution is admitted.

The last portion of this article appears to exclude deck-loads from its operation. See Art. 650 (*post*).

Cf. B. 96, F. 301, G. 619, 713 Diff., H. 481, N. 66, P. 1528, S. 786, Sw. 112, E. 120.

News. § 120 Diff.; Macl. 639.

577. No freight is due for goods lost by shipwreck or stranding, stolen by pirates, or captured by the enemy, and the captain must repay freight paid on them in advance, in the absence of an agreement to the contrary.

Cf. B. 97, F. 302, G. 618, 619, 630, 632, 635, H. 482, N. 66, P. 1529, S. 787, Sw. 111, E. 121.

Macl. 434, 443, 458.

578. If the vessel and goods are ransomed, or if the goods are salved from shipwreck, the captain has a right to freight as far as the place of capture or wreck. He has a right to the freight in full if he contributes to the ransom, provided he carries the goods to their destination.

Contributions to ransom are calculated on the price current of the goods carried at the place of their discharge, deducting expenses and on one-half (the value of) the ship and freight.

Seamen's wages do not contribute.

Cf. B. 97, 98 Diff., F. 303, 304, Id., G. 616, H. 483, P. 1530, S. 788, Sw. 113, E. 122, 123.

Macl. 620, 630.

579. If the consignee refuses to receive the goods, the captain may, with the authorization of the Judge, sell a sufficient amount to pay his freight, and put the remainder on deposit. If the price realised by the sale is not sufficient to pay the freight, he preserves his right of action against the shipper.

B. 78, Id., F. 305, Id., G. 626, 628, 629 Diff., H. 489, P. 1534, Sw. 115, E. 124.

News. §§ 66, 79; Macl. 408, 418.

580. A captain cannot retain the goods carried for default in paying the freight.

He can, at the time of the discharge, require the cargo to be deposited with a third person until the freight is paid.

B. 79, Id., F. 506, Id., G. 624—626, H. 487, N. 68 Diff., P. 1532, S. 794, E. 125.
News. § 66; Macl. 404—406.

581. In no case can the shipper require a reduction in the freight.

The shipper cannot abandon for the freight goods which have decreased in value or deteriorated, whether by their own inherent vice, by accident, or by circumstances beyond his control. However, if casks of wine, oil, or other liquids have leaked so as to be empty or almost empty, they may be abandoned, each for its own freight.

Cf. B. 76, 77, F. 309, 310, G. 617, H. 496, 497, N. 66, 67 Diff., P. 1541, 1542, R. 1027, 1035, S. 790, 795 Diff., Sw. 110, E. 130, 131.
News. § 66; Macl. 438.

TITLE IV.

CH. IV.

Of Passengers.

582. In default of special provisions, a contract for the carriage of passengers by sea is governed by the following dispositions.

There are special regulations for emigrant vessels contained in a law of 11th February, 1859. It may be convenient hereafter to compare the regulations as to emigrants in different states, but they are not to the present purpose. There are also provisions in the Mercantile Marine Code, Arts. 290, 300, 333, by which passengers who commit offences on board are subject to the same punishment as members of the crew.

583. When the voyage is abandoned before the ship starts :—

(1.) If a passenger does not come on board in proper time, the whole passage money is due to the captain.

(2.) If the voyage is broken up by the passenger's refusal, death, sickness, or other accident, or by circumstances beyond his control but affecting him personally, half

the passage money is due, deducting therefrom the expenses of provisions for the probable length of the voyage if they were included in the passage money, saving the disposition on this matter of the Maritime laws.

(3.) If the voyage is broken up by the captain's act, a passenger has a right to recover damages.

(4.) If it is broken up by accident, or by circumstances beyond the control of the parties and concerning the ship, the contract is terminated and passage money paid in advance repaid, but there is no claim to compensation from either party.

B. Bk. II., 127, 128, 129, 130, G. 668, 669, H. 522, 524, 525, 527, Sw. 118, 122, 123, E. 136, 137, 139, 140.

Macl. 307; M. and P. 716.

584. When the voyage is broken up after the ship has started :—

(1.) If a passenger disembarks of his own accord at a port of call, he pays his passage money in full.

(2.) If the captain refuses to prosecute the voyage, or is in any other way in fault for the disembarkation of the passenger at a port of call, he is liable to make good the damage.

(3.) If the voyage is broken up by accident, or by circumstances beyond the control of the parties, affecting either the ship or the passenger personally, passage money is due in proportion to the length of voyage accomplished.

No passage money is due from the heirs of a passenger who has died by shipwreck, but passage money paid in advance is not restored.

B. Bk. II. 131, 132, G. 667, 668, H. 525, 527, Sw. 122, 123, E. 136, 140.

Macl. 307—309; M. and P. 703, 729, 730, 735, 736. 18 & 19 Vict., c. 99, § 56.

585. If the sailing of the vessel is delayed, a passenger has a right to be berthed and also messed on board during the detention, if messing is included in the passage money, and

in addition to recover damages, if the delay is not the result of accident, or of circumstances beyond the control of the parties. If the delay exceeds ten days, a passenger may also rescind the contract, and in this case the whole of the passage money must be returned to him. If the delay is caused by stress of weather, a passenger can only rescind the contract at the expense of the loss of one-third the passage money.

The fact of the stress of weather is established and stated by the officer of the Marine Administration.

B. Bk. II. 129, 133, G. 672.
Macl. 305, 506, 311 ; M. and P. 703.

586. A ship chartered for the carriage of passengers exclusively, must take them without deviation, whatever their number, to their destination, calling at the places mentioned before the contract was made, or at such as are usual.

If the vessel deviates or puts in anywhere at the wish, or in consequence of the act, of the captain, the passengers continue to be berthed and messed at the ship's expense, and have a right to recover damages, in addition to their power of rescinding the contract.

If the ship has, besides passengers, a cargo of merchandise or other things, the captain may, in the course of the voyage, call at the places necessary for the discharge of such cargo.

B. Bk. II. 126, H. 529, E. 141, 148.

587. In case of delay during the voyage occasioned either by an embargo ordered by a Government, or by the necessity of repairing the ship :—

(1.) A passenger, if he does not wish to wait for the termination of the delay or repairs, may rescind the contract on paying passage money in proportion to the portion of the voyage accomplished.

(2.) If he prefers to wait till the vessel resumes her voyage,

there is no increase of passage money, but he must mess at his own expense during the time of embargo or repairing.

B. Bk. II. 133 Diff., G. 672, H. 526, E. 141.
Macl. 308, 309; M. and P. 722, 731, 736, 737.

588. The messing of a passenger during the voyage is presumed to be included in the passage money. If it is excluded, the captain is bound to supply provisions at a fair price to a passenger who requires them during the voyage.

In voyages to places out of Europe beyond the Straits of Gibraltar and the Suez Canal, passengers have a right to remain on board and be messed for 48 hours after the vessel has reached its destination, except in the case of the vessel being obliged to sail again immediately.

Cf. B. Bk. II., 121, H. 530 Diff., E. 142 Diff.
Macl. 311; M. and P. 733—735, 738. 18 & 19 Vict., c. 99, § 57.

589. If a vessel is chartered wholly or partially for the conveyance of passengers, although the number may not be stated, the rights of the charterer [*noleggiatore*] and of the lessor [*locatore*] are regulated according to the provisions of Ch. III. of the present Title, where such rights are not incompatible with the special object of the contract.

The provisions of the Contract of Freight apply to articles belonging to a passenger and taken on board, but no special freight is due for them unless so agreed.

B. Bk. II. 122, 124, G. 673—675, 677, H. 532, 533, Sw. 124, 125, E. 143—147.
Macl. 308, 310; M. and P. 694, 696. *Cohen* v. *S.E.R. Co.*, 2 Ex. D. (C.A.) 253.

F. W. RAIKES.

Quarterly Notes.

The Solicitor of the Department of State, U.S.A., on the Declaratory aspect of Law.

At a time when considerable tension exists in the relations between the Dominion of Canada and the United States, involving the true construction of subsisting Conventions between ourselves and the United States, it seems not unfitting to draw attention to the calm and scholarly *Address* on Law, delivered by the Hon. Francis Wharton to the Students of the Columbian University, at the Commencement of 1885 (University Press: Washington, D.C., 1885). The Address is one eminently characteristic of Dr. Wharton, whose reputation for sound judgment and impartiality has long stood high in the Old World as in the New. If it was good fortune for the students of the Columbian University to be addressed at such an epoch in the Academic Calendar by so thoughtful and sympathetic an orator, it is no less the good fortune of the people of the United States that so eminent a Jurist should have been appointed to the very responsible office of Solicitor of the Department of State. Dr. Wharton, in the Address before us, considers the Declaratory aspect of Law under three forms in Municipal, Constitutional, and International Law. In each of these he finds the Declaratory to be the only fruitful aspect of Law. Repressive legislation, whether by way of the attempt to fix the prices of goods or of the prohibition of uses and trusts, he finds stamped with the mark of inutility. Its only result, as he sees it, is to create means of evasion. Something of this we have ourselves, perhaps, begun to see, in such cases as that of the effect of Sunday closing legislation in Wales, which it

has been fairly argued would only be repeated in Durham and wherever else the same process is applied.

How unconscious we often are of the full force of our own acts Dr. Wharton instructively shews by a reference to the well-known provision in the Constitution of the United States empowering Congress to "establish post offices, and post-roads." In the days when that article was framed, how far were the framers from dreaming of the vast network of Railways now covering the surface of the States and Territories of the Union! Yet their administration, for Postal purposes, is contained in that all unconscious clause.

So with the admission of new States into the Federal Union. Drawn with a view to the peculiar case of Vermont —that Green Mountain, which a son thereof, long resident in London, used to emphasise as his domicile of origin by the use after his name of the mystic letters, "G.M.B.," not readily seen in England to mean "Green Mountain Boy"—the Green Mountain State itself was but the herald, as Dr. Wharton picturesquely tells us, of a long procession of States. First came Louisiana, "leader in this stately train," with her Pelican, emblem of the great Mississippi, "wasting itself in alluvial terraces from which rice and sugar are to spring:" next Florida, whose shield bears "an Indian scattering flowers, while by the palm-tree on the river's bank comes up a boat, prophetic of the numerous travellers, who, in after days, are to seek those balmy shores:" then Texas, "with the lone star on her brow," and California, who shews on her escutcheon "a sceptre stretched over mines with boundless wealth, and harvests of unmatched rarity and luxuriance, and the golden gates of a harbor of surpassing beauty and convenience having an ocean almost to itself." Such are some of the after-buildings of that Constitution whose builders, truly, "builded better than they knew." And each of these

buildings is still Sovereign, nor has its Sovereignty been impaired, Dr. Wharton argues, but rather enforced, by each successive Amendment of the Federal Constitution. "The mine of each sovereignty," says the learned orator, "has been quarried deeper and deeper, so as to bring out its own wealth, but not sideways, so as to encroach on others." Last of all, Dr. Wharton warns his hearers (and as his readers we are placed in the position of his hearers) that "while precedents are to be carefully studied as the buoys of jurisprudence, they do not make, but only mark, the current of the law, and that when the current shifts they must be made to shift with it." So warned, let us look to the buoys of our International Jurisprudence and see that they serve in the Future as guides to the Haven of International Peace.

* * *

The Battle of Codification in the State of New York.

Gone is the Forest Primeval, at least from the State of New York, but still rages the battle of Codification. Our old friend and contributor, Hon. David Dudley Field, seems on the whole to have had a good time at the last meeting of the American Bar Association, to which—in concert with Judge Dillon—he presented, for a Special Committee of the Association, an elaborate and interesting Report on *The Present Delay and Uncertainty in Judicial Administration* in the United States Courts, advocating Codification as the most powerful remedy for the acknowledged evil. The publication of his *Report* (which is now before us) may not improbably have stirred up the Bar Association of the State of New York to issue a counterblast against the "monstrous regiment" of Codification, in the shape of the *Fifth Annual Report* of their Special Committee to "urge the rejection of the proposed Civil Code," also before us. Thus it will be seen that each side is standing to its guns, cleared for action, and a very pretty quarrel they have got.

The Resolution of the American Bar Association, in obedience to which the Special Committee made their Report, it is not unimportant to remark, assumes, as the Reporters point out in their opening sentence, that "delay and uncertainty in the administration of justice do exist," in the American Courts, and "the assumption," they continue, "is unfortunately too true." The ground being thus cleared, and the case taken as proved, the Reporters first address themselves to the extent of the evil, then to its causes, and thirdly to its remedies.

In order to be able to base their recommendations on the consideration of actual facts, the Reporters sent round a Paper of Questions concerning the average length of law-suits and the number of reversals on appeal, to members of the Association in each of the States of the Union. The result they find to be that the average length of a law-suit varies considerably, the least length being a year and a-half, and the greatest, six years.

The uncertainty also varies, the greatest average of reversals in a single year being forty-eight out of seventy-three appeals, and the least, forty-four out of two hundred and forty-four. The Reporters bring one gravamen against the existing state of things in the American Courts which is not without its counterpart on this side of the Atlantic. They complain that the practice of allowing incidental processes to retard the progress of the main contention is very prevalent. "Actions," they remark, "are brought, not with a view to the final trial and judgment, but with the view of gaining a temporary advantage, which may from the sheer pressure of inconvenience and delay upon an adversary, force him to yield, through the operation of an arrest, or an injunction of a receiver." It is certainly not too much to say of this, as Mr. Dudley Field and Judge Dillon say, that it is a dangerous proceeding. For the motions, as they continue, are heard on "one-sided

affidavits, evidence of the loosest and most dangerous kind." The whole system of converting incidentals into principals is clearly one against which the Reporters for the American Bar Association do not speak too strongly when they say it is "a practice to be condemned." There may be lessons for us in this condemnation. On the frequent ordering of new trials for misdirection of Court, or erroneous admission or rejection of evidence as a cause of delay, the Reporters suggest the remedy of requiring the verdict to be special, upon questions submitted by the Court. Thus "an error of the Judge upon the trial would not," they remark, "require a new trial, unless the error related to a finding essential to the judgment; that is, one without which the judgment would not have been rendered."

The great question of Costs is not passed over in silence. It is apparently not quite so serious a question in the United States Courts as it is more and more becoming in our own. Of the two opposing theories on the subject, the one that Costs should be made sufficient to cover the expenses of the successful litigant, and the other that they should cover only the fees of the Court Officers, Mr. Dudley Field and Judge Dillon favour the latter, as the view which experience has shewn to be the better. On this point, also, we may do well to weigh the joint opinion of two such experts.

The problem of Appeals presents itself for solution in the American as in our own Courts. The mode in which the reporters of the American Bar Association face it is eminently practical. "The formality of appealing," they observe, "should be as simple as possible. . . . . The problem is how to facilitate the hearing and decision when the record has reached the higher Court. To solve it, we must compare the work to be done with the workmen who are to do it; in other words, measure the workmen with the work." On this point the remarks of Mr. Dudley Field and Judge Dillon are well deserving of our attention, for it is much

to be feared that with all our apparatus of a re-organised Judicature, we do not always sufficiently consider it. "We know," say the Reporters, "how many hours there are in a day, and how many of these hours a man with a sound mind in a sound body can devote to work. We must put upon him, therefore, no more than he can do, for then the work will not be done." But there must be a limit to litigation, and that may be reached in one of two ways, either by limiting the causes that are to go to the Courts of Appeal, or by increasing the Judicial force. We do not seem yet to have clearly made up our minds as to our decision on this point.

When they come to consider the uncertainty of the Law itself as one of the causes of the existing delay in Judicial Administration, the Reporters for the American Bar Association touch an evil which must always be present to the minds of those who desire that the Law should be codified. Judicial exposition of the Law there would always be, but that is not the same thing as Judge-made law. Taking certain questions which are constantly put to the advocates of Codification, the Reporters proceed to answer them.

The questions and the answers are alike of interest.

"I. How will the Judges decide, if they find no provision in the Code to guide them?"

"II. How will they decide if they find no provision of the Code and no precedent?"

The answer to each, they aver, is easy.

"I. If they [the Judges] find no statutory provision and a precedent, they will decide according to the precedent.

"II. If they find no statute and no precedent, they will decide, as they would now decide in the same circumstances, that is, upon the nearest analogy to an established rule, or according to the dictates of natural justice; or, they may possibly leave the case undecided, as Lord Mansfield did in *King* against *Hay*."

The broad general conclusion of the Reporters in favour of Codification as the best remedy for the delay and uncertainty in Judicial Administration is based upon the argument that although it is true enough that the Code will expand, and "will keep expanding, as the people and their business expand," we shall in the meantime have gained this "inestimable advantage" that "the rules already accepted will for the time being be collected, classified, and arranged, inconsistencies will be reconciled, bad precedents will be discarded, good ones established, and above all, the people will be able to see the law for themselves."

The present state of the Law the Reporters for the American Bar Association regard as Chaos. If they succeed in getting their fellow-citizens out of Chaos, they will be entitled to the gratitude, not only of those fellow-citizens, but of all on either side of the Atlantic who may hold that Order is better than Chaos, and that a Code would at least be the harbinger of Order.

* * *

The counterblast to Mr. Dudley Field's proposed Code, issued by the untiring Committee of the Bar Association of the State of New York has also reached us, and we have given it as much attention as on previous occasions, as we believe any sincere advocate of a particular Code should, in order to benefit by any judicious criticisms. Mr. Dudley Field's own object in sending out copies of his Draft Code to English and Continental as to American Jurists is clearly to obtain the benefit of such criticisms.

But we are disappointed in the latest utterances of the opponents of Codification in New York, because they seem to us to lack any basis save that of opposition. Mr. James C. Carter devoted a lengthy pamphlet to a subject which was in itself a perfectly legitimate form of opposition, and which Mr. Field acknowledged by taking up the points

raised, in so far as he considered them matters of detail, and not objecting to the principle of Codification in the abstract.

The only point that we can trace as raised in the last Report of the New York Bar Association is that Professor Pomeroy objected to the Californian Code, which is substantially identical with Mr. Field's New York Draft Code. In itself, this circumstance is worth the value which may be attached to the expression of Professor Pomeroy's views on such a question. Mr. Field, however, has a good reply to the purely theoretical criticisms of the views of the learned Professor in the practical opinion given by Chief Justice Wallace, late of the Californian Supreme Court. The opinion passed by Chief Justice Wallace is the more valuable from his admission that "at first there was some inclination in the profession to hesitate about the propriety" of the adoption of the Civil Code, but "now," he says, "the Bench and Bar are, with remarkably few exceptions, unanimous in its commendation."

That the Draft Code should be carefully scrutinised, and that account should be taken of the experience of such States as have substantially adopted Mr. Field's Code, is quite right, for no one can hope that any Legislature, as a whole, should satisfactorily discuss a Code Bill, whatever Committees it may appoint, and this is, no doubt, a difficulty which must always attend Codification in our stage of Civilisation, and under what may be called a Popular or Parliamentary Government. But Mr. Field's Code has had the advantage of a long and careful scrutiny, and of a trial in practice in more than one State of the Union, while other States have Codes derived from other sources. We are glad to see the Report drawn up by Mr. Dudley Field and Judge Dillon for the American Bar Association reprinted in the pages of our old contemporary, the *Virginia Law Journal* (Richmond, Va.), and of our

young brother, the *Georgia Law Reporter* (Atlanta, Ga.), because we feel that the more the whole question is discussed the better it will be both for Codification in general and for the particular measure advocated by Mr. Field. What is chiefly desirable is that all personal questions should be put aside, and that the subject should be discussed on its own merits, abstracting from our consideration, if possible, even the fact of Mr. Field's association with his own proposal. What we would say is let the Draft Code be studied as such: let all reasonable criticism be offered and considered: and then, let the Legislature decide as in its wisdom may seem for the best, and let us hope that such best will be the very best.

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The Law Reports in 1886.

Since the publication of the last number of this *Review*, the Incorporated Council of Law Reporting for England and Wales have issued their Annual Report. It calls for more than ordinary attention on the part of the Profession. The Revenue account, after payment of all expenses, shews a vast balance, as before. It is now £11,456 12s., exclusive of a sum of £6,171 17s. 10d., the value of stock in hand. Passing over the large sums set down as Investments and Cash in hand, we find that the Reserve Fund remains at £20,000, an increase of £5,000 upon that of the year 1881. The Profession may fairly ask for what purpose is all this hoarding. No less than £2,700—the details are not given—was spent last year on the *Index to Gazettes*; and, even if "a number of copies were taken by the Government for the "use of the Public Offices," it is difficult to see how the publication of "this large volume" is within the powers of a Council incorporated for Law reporting. It can, indeed, hardly be seriously considered to be one of those "pro-"fessional objects" to which all surplus proceeds (we quote

from the ancient records of Vol. I., No. 1., p. 3, of the *Weekly Notes* for 1866) were to be applied, after answering "the costs of preparation, publication, distribution, and "management" of the *Law Reports* themselves. Indeed, unless the Council (in their discretion) consider the publication of this Index to be "calculated to improve the "system of reporting," it is difficult to see why the Auditors did not disallow all charges belonging to it.

In a balance sheet which otherwise furnishes no item short of £1,300, it is curious to find the information that the Council's share of the profits arising from advertisements amounted to exactly £2 2s. 2d. The subscribers who patiently turn over a publication like the *Weekly Notes*, which sometimes consists of little else than advertisements, have, we think, a right to be paid (through the Council) a little more for their pains.

The omission may be accidental, but we miss from the Report the name of the Editor of the *Weekly Notes*.

One paragraph of the Report calls for most serious comment. The Council say that they "have during the "past year employed additional Reporters in the Appeal "Courts in order to avoid delay." The Reporters of the Chancery cases in the Court of Appeal are now four, instead of two, in number. The two "additional reporters" are nothing more than two of the staff of the Courts of first instance, where they still have their former duties with only one colleague as before. The staff of reporters in the Chancery Division is accordingly as follows:—In the Appeal Court there are four reporters, one of whom is also the standing compiler of Digests to the Council, whilst two out of the remaining three are also reporters in other Courts. In Chancery Court I. there is only one reporter: he is also an Examiner of the Court, and thus liable to be called away to Newcastle or Penzance at any time. In Chancery Court IV. there are two reporters, one of whom is also a

reporter in the Court of Appeal. The case is the same in Chancery Court III., except that there the reporter who is not attached to the Court of Appeal is himself also an Examiner of the Court. In Chancery Court II. one of the two reporters is also the Council's sole reporter for Bankruptcy cases in another Court; whilst in the Lord Chancellor's Court one of the two regular reporters is also the Council's sole reporter of Bankruptcy cases in the Court of Appeal. To say nothing of the propriety of the reporters in the Appeal Courts being of riper experience than, and independent of, the reporters in the Courts below, there is not, we believe, any one among the sets of Reports furnished by the Law newspapers which has so singularly overworked a staff.

Our comments are, practically, confined to the Annual Report of the Council, who, we trust, will anticipate the obvious improvements which may otherwise be forced upon them. We would, however, hope that they may this year spare themselves the annual recurrence of the now traditional December Chancery number, and instruct themselves from their own scheme (which might well be republished as a sign of their good intentions) that they "have full power to "increase" (but probably none to diminish) "the number of "their reporters," and that it was intended that "as a "general rule, each decision shall be published, as nearly "as may be, within a month from its date."

That new Rules of Court, when reprinted in the *Weekly Notes*, should be printed on one side only of the paper is, perhaps, so obvious a criticism as to need an apology. We renew from former numbers (*Law Magazine and Review*, Nos. CCXXX. and CCXLVI.), our suggestions of an auxiliary working Council of young and practical men, with sub-editors (whose names should be published, as should those of all who are paid directly by the Council), of independent work, and unbroken attendance in Court.

The Incorporated Council have shewn themselves alive to the force of many suggestions made in our pages, and we have seen with special satisfaction in this respect the reduction of the annual subscription. It is time, however, for the Council, in this year of their majority, to re-consider their responsibilities. We cannot, under the circumstances, believe that they will allow themselves, with an income exceeding their expenditure, to rest content with pointing in their current Report, "with satisfaction to "the reduction of the subscription and the presentation "to the subscribers of so many valuable and useful works "as sufficient proof of their desire that their subscribers "should fully participate in the benefits arising from the "success of the Law Reports." We have already pointed out that much more is wanted and may fairly be asked from the Incorporated Council, before the members of the Profession who support the undertaking with their subscriptions can be considered to "participate," as fully as we would wish them to be able to participate, "in the "benefits arising from the success of the Law Reports."

Reviews.

History of Taxation and Taxes in England. By STEPHEN DOWELL, M.A. Longmans. 1884.

Mr. Dowell's book is one of considerable value to the student of our History and of our Legislation. It takes us through what may be called one of the greater by-roads of History, but one which is so important that it might well be called a high road. The subject is one which does not sound attractive, and yet it is one which the student of History cannot afford to neglect, and least of all, perhaps, the student of Constitutional History. The story of mediæval life in England, as in most other countries of Western Europe, is to a great extent the story of the perpetual struggle between the Kingly power and the power of the

as yet but half-fledged Parliaments, over the granting or refusing of supplies for the Kingly needs. The King demands an aid: Barons, Clergy, and Burgesses demur,—sometimes all three demur. The Clergy have their special grievances, their special demands. They must tax themselves in their own Convocation. They carry the day on this point, and they fade out of sight as an estate of the Realm. The Barons object to one form of taxation: the Burgesses to another. Promises must be made by the King,—to be broken as soon as an opportunity occurs. But the fact that the promises were made is of record, and it is brought up against the King or his successors, and the breach of the compact is cast in his teeth.

Thus the King is gradually taught *pacta servare*, and the nation, from the Baron to the Burgess, is as gradually taught to recognise its unity, its rights, and its power. But for the ever recurring strife over mediæval taxation, we should scarcely have had our mediæval drawing together of classes which had little apparently in common. But for the uprising of the olden strife, nominally based, moreover, on mediæval taxation, under the name of Ship-money, we should scarcely have laid the coping-stone of our Constitutional Edifice in the Bill of Rights, the legitimate sequel and complement of Magna Charta. Such and so great has been the power of Taxation in England.

It is obvious, of course, that Mr. Dowell, looking at English History from the special point of view of Taxation will find much or little to say on particular periods of that History according as Taxation was or was not of importance. He has, therefore, very little indeed to say about the pre-Norman portion: little beyond the bare mention of the Roman *Scriptura* and *Capitatio*, which were certainly assessed upon Roman Britain: little beyond the bare mention of Shipgeld, Danegeld, and Fumage or Hearth-tax, in Anglo-Saxon times. Yet of these latter taxes some became famous through the controversies which turned upon them in later days. If there was one point in which Becket may seem to have won a victory, it may be said to have been in the at least nominal abolition of Danegeld. It is true that the victory was, perhaps unavoidably, chiefly nominal. The name disappears, the thing reappears under other names. The requirements of an island kingdom gave an importance to taxes for a national Fleet which could not but throw the burden of a seeming want of patriotism on those who at any time might oppose such a taxation. Super-

ficially, indeed, the contention for the Crown in the days of the great Ship-money Case might well seem to involve the whole question *stantis vel cadentis patriæ*. And, of course, disloyalty and want of patriotism were charges freely lavished upon those who felt it necessary to oppose the Crown for their very country's sake—to withstand the King in order to stand by the Fatherland.

The incidents of Mediæval Taxation throw much light on the social condition of England, and we are inclined to think that the Middle Ages could still afford scope for separate treatment from this point of view alone. There is a certain danger, it is true, in such special works, the danger of seeing only the one aspect of things which is specially before the writer. But there is also the value in such researches that they bring together for the student in one treatise on a definite subject, a mass of details which would otherwise have to be sought in many and various works. The Jews seem to be somewhat briefly dismissed by Mr. Dowell. Their fiscal history throughout the Middle Ages is generally pretty much the same in all countries. They were sought after in some parts of Europe for their skill in medicine, but not without a certain horror of the "miscreant." They fared better in the Moorish capitals of Spain, and in semi-Moorish Sicily, than in England. Yet it seems to be a question how far their nominal expulsion under Edward I. was not, in fact, only nominal. Formally, no doubt, they were not supposed to be allowed here, but, practically, their commercial abilities and their commercial relations would appear to have given them something of a continuous footing in England, however unknown to the Law, and the fact of mediæval conversions to Judaism, sporadically recurring in our History, tends strongly to confirm the belief in the persistent maintenance of a certain Jewish element in the population of mediæval England.

The war of Tariffs is brought before us by Mr. Dowell in its early and modest beginnings, in connection with the grant to Henry VII., in the seventh year of his reign, of a special duty on Malmsey imported by merchant strangers from Crete, or Candia. The Serene Republic of St. Mark, at that time lords of Candia, had imposed a duty on imports into the island, and England, by way of a counterblast, laid a tax on Candian imports. So commenced the long struggle, not yet at an end, between Protection and Free Trade, and those who visit the Queen of the Adriatic, as they form part of the gay throng that

daily fills the wonderful Piazza of St. Mark, and look upon the tall masts yet standing in front of the ancient Palace of the Doges, may see in the mast which represents Candia a visible token of an old-time Fiscal contest between England and Venice. Corinth, through the currants to which it gives its name, has also its place in our Constitutional struggles over taxation. The "grapes of Corinth" were an article of import of consequence in the Levantine trade. A Turkey merchant, the famous Bates, refuses to pay the King's impost in 1604, and the King's Judges decide against the merchant. For "affairs of Commerce," say the Judges, "and all treaties with foreign nations belong to the King's absolute power. He, therefore, who has power over the cause, must have it also over the effect. The sea-ports are the King's gates, which he may open and shut to whom he pleases." We are thus landed in questions which belong at least as much to Constitutional Law and History as to the history of Taxation. And, indeed, what strikes us most forcibly in reading such Treatises as Mr. Dowell's, side by side with other works professedly dealing with other branches of History, is the close inter-dependence of nominally separate Treatises. It appears to us impossible, practically, to draw the line which at some points should sever such a book as Mr. Dowell's from being considered as a Constitutional History. The history of our Taxation is necessarily a part of the history of our Constitution. It is well that specialists, like Mr. Dowell, should devote separate works to the consideration of the particular aspects of our Constitution to which they have devoted the closest attention. It will be well for the student to read Mr. Dowell's book with the care and thought which such a Treatise deserves. But it will be better still for the student to read Mr. Dowell's *History of Taxation* side by side with Broom's *Constitutional Law* and Taswell-Langmead's *Constitutional History*. For the truth is that all such books deal with the building up and the working of that complicated machinery of State which we call the British Constitution.

Our Hanoverian Kings. A Short History of the Four Georges. By B. C. Skottowe, M.A. Sampson Low & Co. 1884.

A Short History of Parliament. By B. C. Skottowe, M.A. Swan Sonnenschein, Lowrey & Co. 1886.

In these two small volumes, both treating important portions of the general field of English History, Mr. Skottowe has done

good service to the student who wants his information compressed into the smallest compass fairly compatible with an intelligent narrative.

The process of "boiling down" is not an easy one for the writer of such books. The materials have accumulated and are still accumulating so rapidly that it must have been with a despairing glance around that the author took up his pen, and proceeded to construct his brief story of our Parliament and of our Hanoverian Kings.

Both subjects were eminently suitable for separate treatment, and each, of course, has been treated separately in very considerable detail. We do not look for discussions of minute points, in such a handy volume type of History; we only expect to find the broad outlines laid down, and tables and maps and lists of events, to facilitate the general reader's understanding of the period or subject. These helps,—and very material they are for the purpose,—Mr. Skottowe freely gives where they are most to be desired. The Hanoverian period required them more particularly, and we find them accompanying the text of *Our Hanoverian Kings*. In this period, the student has to carry his thoughts far afield, to Canada and New England, on the one hand, to India on the other. He has to follow Wolfe and Montcalm, Washington and Lafayette, Clive and Dupleix, Warren Hastings and Nuncomar. Without the helps with which he has been provided by Mr. Skottowe, the average student, whose knowledge of the general Contemporary History of any period is seldom either extensive or accurate, would unquestionably fail to grasp much of the teaching which it is the object of all Historical reading to impart. It is not simply a question of getting up names and dates, but the much more serious question of understanding the often complicated and hidden springs of action to which we have owed the movements of Kings, of Statesmen, of Generals, and of Diplomatists. We could have wished that Mr. Skottowe had been able to profit by the flood of light recently poured by Sir James Stephen on the long misunderstood history of Warren Hastings, in the matter of the trial of Nuncomar. This is, of course, not Mr. Skottowe's fault, and it is a point on which he can easily introduce such alteration or annotation as he may think desirable in the next edition of *Our Hanoverian Kings*. The antagonism of Francis, alike to the Chief Justice who presided over the trial, and to the Governor-General who, rightly, as we believe, felt that the trial was

necessary, was an antagonism dating back at least to the very voyage out, when the vessel bearing the new Judicial officials was the subject, with its passengers, of the biting sarcasm and epigram of Philip Francis.

The opportuneness of the present moment for the publication of Mr. Skottowe's *Short History of Parliament* scarcely requires to be pointed out. There are many who will read what is almost a pocket companion on a subject of great, and it may even be thought of growing importance, who have neither the time nor the patience for the larger Histories. It is very difficult to say anything which should give a notion of the method pursued by Mr. Skottowe without giving a *précis* of the book itself, for which we have neither the space nor the time. But we may broadly state the author's method as being the narration in language as untechnical as possible of the outlines of Parliamentary History from the days of the Witan to the present time. In this outline the Institutions of our own day are briefly traced from their rude germs, and the Alderman, the Baron, the Knight, and the Burgess all have their place in a story which is the story alike of a Simon de Montfort, and of a Robert Peel, of a Burnell, and of a Campbell.

There are some minor points on which, in his endeavour after conciseness, Mr. Skottowe has used language patient of amendment in a future edition. Impressed, and desiring to impress others, with the broad fact that our Parliamentary Constitution is one which has developed gradually from the very nature of things, we find our author speaking of the Chancellor as the natural President of the House of Lords. To modern eyes, the Lord High Chancellor, no doubt presents this aspect. But, in order to understand his growth, we must consider what he was in his origin, and then we shall see that in fact, though not in name, he has undergone an entire transformation. There is no question that in his origin the Chancellor was simply a Royal clerk and chaplain—clerk, because chaplain—highly confidential adviser, because chaplain. Thus it was to his Ecclesiastical character that he owed his influence, quite as much as to his learning, which was, indeed, only the outward sign of his Ecclesiastical status. His growth was slow, but sure. His opportunities for a word in season, spoken into the Royal ear, were constant: the opportunities of the Justiciar were comparatively rare. So the greater Officer of State, the Justiciar, went down easily before the Chancellor, and

once the power of the Justiciar was broken there was clearly no one left to cope with the Chancellor. Thus it is that we have come nigh to forget the once almost Regal sway of the Justiciar—the *alter ego* of the King—and, looking upon the actual power of the Chancellor, to say, as we know that men said in the days of Becket: "How great a Sovereign must be the ruler whom so powerful a Chancellor represents!"

The late date down to which Mr. Skottowe brings his *Short History of Parliament* enables him to draw attention to certain grave Constitutional questions involved in recent Parliamentary events. The fact has now been sharply brought home to us, if we had previously shut our eyes to it, that "it is possible for the overwhelming personality of the Prime Minister to exclude the whole Cabinet, almost to the last, from even any knowledge of the proposals about to be brought forward in the name of them all." Some, of course, may deliver their souls, as did Mr. Chamberlain and the present Sir George Trevelyan, by retiring from a Government with which they are no longer in harmony, and this, the latest case on the subject, is duly recorded by Mr. Skottowe. But such a course undoubtedly involves serious responsibility, and can seldom be taken save as a last resource. The relations of the Premier to the Cabinet seem to require reconsideration, and even readjustment. The more the history of Parliament is studied, the better shall we be able to meet the difficulties which the Future may have in store, and present a united front to all that may seem to imperil the supremacy of the Legislature of the United Kingdom.

The Powers, Duties and Liabilities of an Election Agent and of a Returning Officer at a Parliamentary Election. By FRANK R. PARKER, Solicitor and Parliamentary Agent. Knight & Co. 1885.

If, as we may fairly assume, the object of the author was to write a useful handbook for persons taking an active part in a Parliamentary electoral contest, we do not think that it has been quite attained. In the first place the book is too bulky; for, notwithstanding that the Statutes, &c., relating to Municipal elections have been omitted, it contains close upon 700 pages, about 40 being devoted to an elaborate table of electoral statistics which the Redistribution of Seats Act, 1885, has rendered almost useless.

The arrangement of the subject-matter, moreover, is by no

means free from fault, as may be seen by glancing at the first three chapters. Chapter I. is on the Election Agent and his Staff; Chapter II., on the Returning Officer and his Staff (including the duties of the latter at the poll and at the counting of the votes); and Chapter III. is on the Candidate. Considering that there is no Election Agent until there is a Candidate, this arrangement appears to us a reversal of the proper order. Again, instead of dealing with questions relating to the liabilities of the Election Agent and Returning Officer in the chapters treating of those officials, the consideration of these matters is deferred to the last two chapters in the work. In fact, generally, the information relating to the duties of the various parties concerned is too much scattered about the book, and the directions given are scarcely of a sufficiently precise and definite nature.

There are 75 Forms, which are printed in an Appendix. In our opinion, it would have added to the utility of the book if they had been incorporated in the text. Some of the Forms are meagre, and several are omitted which might with advantage have been inserted. For instance, there is no Form of instructions for polling agents, nor is there one for an agreement for hire of rooms.

Great care has, however, been taken by the author to collect and arrange the numerous cases on Election Law, and the specimens, given on pp. 182 *et seq.*, of rejected ballot papers will probably be of assistance to Returning Officers. The book contains much useful information, and the advice given is, as a rule, sound and cautious. It would have been well, indeed, if the author's remarks on the preparation of instruction cards for voters had been more generally read and acted upon at the recent General Election.

An Election Manual. By J. E. GORST, Q.C., M.P. Containing the Parliamentary Elections (Corrupt and Illegal Practices) Act, 1883. Chapman and Hall. 1883.

The Corrupt and Illegal Practices Prevention Act, 1883, with Notes and an Index (forming a Supplement to the 13th Edition of *Rogers on Elections*). By J. CORRIE CARTER, Recorder of Stamford. Stevens and Sons. 1883.

Of the two works above named, those of Sir John Gorst and Mr. Carter, the former professes to be an Election Manual, and

the latter is an annotated Edition of the Corrupt and Illegal Practices Prevention Act, 1883. The Election Manual is, however, in great part, a re-print of the Act against Corrupt Practices, with notes to a few of the sections. It is preceded by an Introduction of nine or ten pages, in which the alterations in the Law of Elections made by the Act in question are considered under three heads. The third chapter, entitled "The Election," contains useful information for those who may have the conduct of an Election, but the author does not, for those who might desire it, distinguish by references his rendering of the statutory enactments from his own practical suggestions. The net result may, however, suffice for the general reader of a moderate-sized manual, but the utility of the book would have been greatly enhanced by an Index, which should certainly be added in a future edition.

Mr. Carter's work is given to us by way of a Supplement to *Rogers on Elections*, and claims only to point out and comment on the new matter contained in the Corrupt and Illegal Practices Prevention Act, 1883, though the Editor hopes that it may be found useful independently of the standard Treatise to which it specially refers.

Although the references to *Rogers* for further information are frequent enough, it must be allowed that the notes to the various sections are numerous and valuable. This edition of the Act is well printed and clearly set out, and the Index is full and well arranged.

Winding-up Forms. By FRANCIS BEAUFORT PALMER, Barrister-at-law. Stevens and Sons. 1885.

Of companies, as of individuals, it may often be said, that "nothing became them in life like the leaving of it." The funeral may be performed with all due obsequies by the practitioner who has made himself acquainted with this latest addition by Mr. Palmer to his well-known series of works on Company law. As long as there are investors to place faith in a prospectus, and promoters whose motto is *respice finem*, so long will companies continue to be "no sooner born than blasted." It is for the advantage of the community that the method of their close should be uniform and certain. Towards this end Mr. Palmer's present work is, we think, a distinct contribution. It is pre-eminently a book of Forms, Rules, and references, and one in

which the comments must rank as *obiter dicta*. Thus, the terse observation appended to Form 310, a general order for service out of the jurisdiction, viz., that "hundreds have been made," must be contrasted with the cautious reservation of Lord Justice Cotton on the same subject in *Whaley* v. *Busfield*, L.R. 32 Ch. Div. 133.

There is a candour about some of the notes on Practice which will commend them to counsel, especially as to certain well established usages of the Courts which no Acts or Rules have ever ventured to state, but an ignorance of which is more fatal than even a lack of that justice and equity (for someone) which is the presumed foundation of every winding-up.

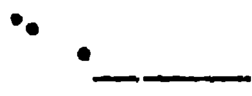
An Appendix contains the material Acts and Orders, with a selection of Rules, and there is a valuable tabular statement of some leading cases on the Law of Contributories.

The book deserves what it has not got,—a really full Index.

The Law and Practice of Bankruptcy and Imprisonment for Debt, comprising the Statutes, General Rules, and Forms, and Bills of Sale Acts. Second Edition. By LAWFORD YATE-LEE and HENRY WACE, Barristers-at-Law. W. Maxwell and Son. 1884.

There is an opinion rather widely diffused to the effect that the community would be none the worse off, perhaps the better, if Bankruptcy Legislation were swept away altogether. Such a view has not, however, up to the present time gained the ascendancy in the British Parliament, which continues to present us about every ten years with fresh schemes for relieving insolvent debtors from their obligations. As long as this process of legislative experimenting is allowed to go on, so long will treatises such as the one under review find their *raison d'être*, and be welcomed as valuable guides to the perplexed Practitioner who is compelled to thread his way through the mazes and labyrinths of enactments in the highest degree artificial. The first edition of this work, which was called into existence through the passing of the Act of 1869, won for itself the position of a standard authority, and, so far as we are able to judge, that reputation will be fully maintained by the publication of the second. In its general plan of arrangement the new edition resembles its predecessor—the Act itself being printed with intersectional notes,—though it differs from most of its competitors in the same field in the addition of notes to the Rules,

and such associated enactments as the Debtors and Bills of Sale Acts. Treatment so elaborate necessarily entails the concomitant inconvenience of unwieldiness in size; yet it would, we think, be impossible to point to any portion of this bulky volume which might be considered superfluous. The Notes, as they are modestly termed, constitute in reality an exhaustive Digest, wherein both previous and existing Bankruptcy legislation is comprehensively discussed, and the leading cases bearing upon corresponding provisions of former Acts are carefully collated. When the method here adopted of intersectional notes is compared with the alternative system of condensing Statutes and case-law into one heterogeneous whole, it will be conceded, we believe, that Messrs. Yate-Lee and Wace have exercised a sound discretion, as, for purposes of ready reference—which is the chief desideratum—the former plan possesses obvious advantages over the latter. In the annotation of the new sections the authors cannot be accused either of unnecessary diffuseness, or of venturing unduly upon conjectures which subsequent Judicial decisions might fail to bear out. Unhappily for litigants, the involved and loose phraseology indulged in by modern framers of Acts of Parliament almost invariably stands out in significant contrast with the clearness and conciseness employed in days gone by; and the Bankruptcy Acts contain, as a rule, their full share of vague language and of pitfalls destined to catch the unwary. It would indeed be unreasonable to expect uniform and invariable success in interpreting so lengthy and intricate an enactment, in a work published before the provisions of the Act had been subjected to Judicial scrutiny in the Courts. This consideration has evidently been kept in view by Messrs. Yate-Lee and Wace, who accordingly exhibit commendable caution in not hazarding predictions upon debateable and obscure points of construction. The book is furnished with a copious Index and is admirably printed.



Amos and Ferard on the Law of Fixtures. 3rd Edition. By CHARLES AGACE FERARD and W. HOWLAND ROBERTS, Esqrs., Barristers-at-Law. Stevens and Sons. 1883.

The appearance of a new edition of this well-known work is amply justified, were it only by the length of time which has elapsed since the publication, in 1847, of the second edition,

and the number and importance of the subsequent Acts of Parliament and legal decisions relating to the subject. It is still further justified by the industry and ability with which it has been prepared by the present Editors, of whom the senior, we note with pleasure, continues the name of the junior of the Authors in connection with the work.

As the Editors rightly observe in their preface, "Of the long "series of important decisions upon the difficult question of "Annexation, commencing with the well-known case of *Hellawell* "v. *Eastwood*, in 1850, all are of a date subsequent to that of "the last edition; whilst of enactments immediately affecting "the law of Fixtures, it will be sufficient to mention the Bills of "Sale Acts, the Bankruptcy Acts (1849-1883), the Ecclesiastical "Dilapidations Act, 1871, and, in particular, the Statutes of "1851, 1875, and 1883, respecting the rights of Agricultural "tenants."

We think that the Editors have shewn their judgment in omitting the curious but now purely antiquarian law touching Deodands, and were warranted in their final decision to retain in its original form the section treating of Trespass, Trover, &c., not only for the reason they assign, of its utility for future cases, but also for its value in making clear the Reports of existing cases.

Although some doubt is thrown in the Introduction, p. xlvi., on the propriety of the differences made by the Courts in the several cases of Landlord and Tenant, Executor of tenant for life or in tail and Remainder-man or Reversioner, and Executor of tenant in fee and the heir, we venture to think they are justified by the various relations of the several parties to each other.

The reader will find at p. 24 some pertinent remarks of Blackburn, J., on the burden of proof in questions of Annexation, and at p. 33 some curiosities of old law, from which, amongst other points decided, he will learn, on no less an authority than that of Holt, C.J., that, "If a man be hung in chains upon my "land, after the body is consumed I shall have gibbet and "chain."

The student of mediæval Law and History should also refer to the Ordinance touching Fixtures promulgated by the City of London in the 14th century, to be found in Appendix A., p. 407, as one of the earliest and most important enactments on this subject.

The section on charters, heirlooms, &c., p. 249, is also one which contains some recondite Law.

Altogether we feel that we can recommend this new edition of *Amos and Ferard on Fixtures* alike to the practitioner and to the student.

Private Arrangements between Debtors and Creditors. With Precedents of Assignments and Composition Deeds. By REGINALD WINSLOW, M.A., LL.B., of Caius Coll., Camb., and Lincoln's Inn, Barrister-at-Law (Equity Scholar, Lincoln's Inn, 1882). Clowes and Sons. 1885.

Some time ago we were called upon to notice a handy little volume called *Precedents of Deeds of Arrangement between Debtors and Creditors*, written by Mr. G. W. Lawrance, of the Equity Bar, and issued about a year after the Bankruptcy Act, 1883, became law. The young writer whose book is now before us has taken a longer time and produced a book of a more ambitious kind, the Precedents, in his case, forming merely an Appendix to about two hundred pages of useful Commentary. One or two specialities of method are worthy of notice. The name of the Judge is generally (perhaps always) mentioned in connection with each decision; a very useful practice, for the value of a case depends much on the reputation of the person who decided it. Whenever a text-book is referred to, the particular edition is indicated by a small figure placed on the right and a little above (like an "index" in algebra), so that the reader need never lose time by seeking a passage in a wrong place. The preface explains these mysterious little digits, and tells us that the method is German; we should prefer "2nd Ed.," "3rd Ed.," &c., in brackets, for unnecessary symbolism is to be deprecated. A reviewer, of course, reads a preface, but a barrister who "looks up" a point in a hurry cannot be expected to do so. The arrangement of Mr. Winslow's matter is methodical, and his statements of cases are clear and (so far as we have been able to verify them) accurate. Roughly speaking, and without too minute enumeration, the subject may be said to be treated under three heads: first, the nature of an Arrangement and how it is made; secondly, its general effect and limits; thirdly, its operation as affecting or affected by particular persons or by special circumstances. Apart from these heads, which are well selected and well preserved, there is an excellent chapter on "Duties, Powers, and Liabilities of Trustees;"

and the last chapter embodies some useful "Practical Suggestions" as to the preparation of a composition agreement. One of these suggestions is (substantially) that onerous leaseholds should not be assigned to the trustees, a precaution shewn to be necessary by a decision under which a trustee was held liable for rent, and was not allowed the alternative of refusing the leasehold property, as he might have done if earlier decisions had been followed. Another suggestion is that, where the deed is an act of bankruptcy, as it would not be safe for the trustees to convert until the expiration of three months, the debtor should carry on the business in the meantime. This is prudent advice; but in order to explain the words as to "the expiration of three months," the author refers to a previous page, in which, we think, he scarcely makes the matter sufficiently clear. He mentions section 43 of the Bankruptcy Act, 1883, under which (in substance) a debtor's bankruptcy is deemed to commence at "the time of the act of bankruptcy being committed on which a receiving order is made against him;" and he alludes to section 168 (1), where an "available act of bankruptcy" is defined by reference to the "date of the presentation of the petition on which the receiving order is made," but he tells us nothing about section 6 (c), which, by limiting the time for presenting a petition to three months. seems to furnish the clue to this somewhat labyrinthine piece of legislation. Nor is it in this place alone that Mr. Winslow falls somewhat short as an interpreter of the law to the uninitiated; his special chapter on the effect of the Act of 1883 seems to shew, throughout, a want of grasp or a limited power of exposition. Under such a title we should expect to find a sharp line of demarcation between the law before and the law after the commencement of the Act, but such a line is by no means clearly drawn. Mr. Winslow fails to point out the leading feature of the Act, namely that it deprives arrangements and compositions of their dangerous qualities by providing, in effect, that no creditor shall be bound without the approval of the Court. This, in a chapter bearing such a title, is a serious omission. Mr. Winslow mentions the "new act of bankruptcy" introduced by section 4 (1), (h), viz., notice to any creditor that the debtor has suspended or is about to suspend payment; but it does not occur to him (as it does to Mr. Lawrance) that the question must be faced, whether the new rule makes the execution of the deed by the debtor an act of bankruptcy in itself; consequently, he merely recommends

that there should not be a recital of the debtor's inability to pay his debts, a precaution scarcely sufficient to ensure absolute safety. It may be remembered that Mr. Lawrance, in the little work above-mentioned, advised that, *ex majore cautelâ*, there should be a letter of license signed by the creditors alone. We do not say that this is the only safe course, and it has its disadvantages, as Mr. Lawrance himself points out; but we think that Mr. Winslow treats the difficulty a little too lightly. An important case on section 18 (*re Clark*), which was reported in the daily papers and is mentioned by Mr. Lawrance, has, apparently, failed to get into the Reports, for we do not find it mentioned in Mr. Winslow's Table of Cases. Mr. Winslow's task, upon the whole, appears to us to have been very creditably executed; and the "get up" of the work is quite irreproachable.

A Manual of Bankruptcy and Bills of Sale Law. With Analytical Notes to the Bankruptcy Act, 1883; together with Rules, Orders, and Forms. By J. EDMONDSON JOEL, of the Inner Temple, Barrister-at-Law. Stevens and Sons. 1884.

The introduction of a new Act of Parliament to the attention of practitioners in Bankruptcy was certain to be the *causa causans* of a large crop of text-books on that abstruse subject. We have already dealt with many such publications; we would we could hope that the one now under notice would be the last. Were it really to be the last, Mr. Joel's book would by no means be the least, for the author has done his work very carefully, and we cannot but think that it has merits which should make it widely known. The new Bankruptcy Act has, it is true, superseded the law existing before it came into force, but the author has diligently collected those decisions of the Courts on points of the old law which may help to elucidate questions under the new law when of a similar character. To this he has added *verbatim* the whole of the General Rules made under Section 127 of the new Act.

We are pleased to find that the several correlative sections of the Bills of Sale Acts of 1878 and 1882 are placed in juxtaposition, so that the interpretation of the two—the amending and the amended—Acts, may easily be arrived at. Mr. Joel has also borne in mind that although the old Acts of 1854 and 1866 were repealed by the Act of 1878, the repealed Acts are still applicable

to all Bills of Sale executed prior to the 1st January, 1879, for he wisely cites cases decided under the repealed Acts wherever they are still applicable.

We are glad to be able to recommend Mr. Joel's book to the attention of the practitioner.

A Treatise on the Law of Guarantees and of Principal and Surety. By HENRY ANSELM DE COLYAR, Barrister-at-Law. Second Edition. Butterworths. 1885.

The subject to which this Treatise is devoted is one of acknowledged difficulty, and is discussed with considerable success by Mr. de Colyar. The method pursued by him is one which English text writers do not as a rule adopt. That is to say, the author does not merely collect the authorities bearing upon his subject, but he likewise, where apparently conflicting decisions exist, endeavours to reconcile them, and in dealing with the operation of the Statute of Frauds on Guarantees, deduces from the numerous decisions which have been given on the 4th section of the Act, definite rules for determining what promises are within the enactment. In some instances, Mr. de Colyar is, perhaps, inclined to be too critical, but this is not a fault of which those who consult his work will seriously complain. The present Edition is, in many respects, a great improvement on the earlier one. The arrangement of one or two of the chapters into which the Treatise is divided has been simplified, and the addition of marginal notes throughout the text cannot fail to facilitate reference. Upwards of 1,140 cases, including the principal Irish and American decisions on the Law of Guarantees, are referred to by Mr. de Colyar in the present edition of his work: but among the English decisions on the same subject we regret to observe an omission, viz., the recent case of *Lowe* v. *Dixon*, 16 Q.B.D. 455, dealing with the question of contribution amongst sureties. The Index, we are pleased to see, has been much enlarged and is now of a very full and elaborate character.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR AUGUST, SEPTEMBER AND OCTOBER, 1885.

By OLIVER SMITH, M.A., of the Inner Temple, Barrister-at-Law.

VOLUME 11.

Administration:—

(i.) **Ch. D.**—*Lapse of Realty—Debt due from Heir-at-Law—Set-off.*—An executor and trustee of a will cannot set off a debt due to the estate from the heir-at-law against money, the proceeds of a lapsed share of realty sold under the trusts of the will.—*Milnes* v. *Sherwin*, 33 W.R. 927.

(ii.) **C. A.**—*Practice—Infant Plaintiff—Limited Accounts and Inquiries—Costs—R. S. C.* 1883, *Ord.* 55, *rr.* 3, 4, 10—*Trustee—Discretion as to Time and Mode of Sale.*—Under the new practice an infant is not entitled, as a matter of course, to an administration judgment at the expense of the estate.—The Court will not interfere with the *bonâ fide* exercise of the discretion of trustees for sale.—*Re Blake; Jones* v. *Blake*, L.R. 29 Ch.D. 913; 54 L.J. Ch. 880; 33 W.R. 886.

(iii.) **Ch. D.**—*Practice—Jurisdiction of Chief Clerk—Order for General Administration.*—The proviso in R. S. C., 1883, Ord. 55, r. 15, that no judgment or order for general administration shall be made by a Chief Clerk, applies to administrations of the trusts of deeds, and not only to administrations of testators' and intestates' estates.—*Davidson* v. *Young*, 54 L.J. Ch. 747.

(iv.) **Ch. D.**—*Practice—R. S. C.*, 1883, *Ord.* 55, *r.* 3—*Costs.*—It appearing, in an administration action brought by a *cestui-que-trust* against his trustee, that there were only two short points calling for decision, upon which there was practically no dispute as to the facts, and which might have easily been decided in Chambers, the Court gave no costs of the action. —*Re Johnson; Wagg* v. *Shand*, 53 L.T. 136.

(v.) **C. A.**—*Retainer by Executor—Company—Balance Order—Specialty*

Debt.—Decision of Ch. D. (*see* Vol. 10, p. 1, i.) reversed.—*Re Hubback; International Marine Hydropathic Co.* v. *Hawes*, L.R. 29 Ch. D. 934; 52 L.T. 908.

And see Practice, p. 15, ii.; p. 17, ii.

Advowson :—

(i.) **Q. B. D.**—*Quare Impedit—Right of Presentation.*—A testator, in whom was vested an advowson subject to a mortgage, gave all his real and personal estate to trustees, upon trust to receive the income and pay it over to his wife for life, &c.: *Held*, that the right of nomination belonged to his widow.—By 26 & 27 Vict., c. 120, s. 21, it is not lawful for the purchaser or grantee of an advowson under the Act to resell until after five years from the date of the sale or grant to him. Such a purchaser or grantee purported to resell within, and to present after, the five years. In the meantime the living had become vacant. *Held*, that there was no affirmance of the contract to resell which could take effect.—An Order in Council under 3 & 4 Vict., c. 113, cannot control a subsequent Act of Parliament.—*Welch* v. *Bishop of Peterborough*, L.R. 15 Q.B.D. 432.

And see Deed.

Arbitration :—

(ii.) **C. A.**—*Agreement to Appoint Valuers—Common Law Procedure Act*, 1854, *s.* 17.—An agreement between landlord and tenant contained the following clause:—"That the tenant shall be paid at the expiration of the tenancy the usual and customary valuation, as between outgoing and incoming tenant, in the same manner as he paid upon entering the premises;" and "when any valuation of the covenants shall be made between the tenant and the landlord or his incoming tenant, the persons making such valuation shall take into consideration the state, condition and usage of the said lands and premises and, if not left in a proper and creditable state, shall determine what sum of money shall be paid to the landlord as compensation" &c. Two valuers were appointed, in accordance with the custom, by the landlord and tenant respectively, to determine the amount to be paid by the landlord to the outgoing tenant; who, being unable to agree, appointed an umpire; who published a written award. *Held*, that there was no submission in writing to arbitration which could be made a rule of court under the above section. —*Re Dawdy*, L.R. 15 Q.B.D. 426.

And see Lands Clauses Act, p. 12, iv.

Auction.—*See* Solicitor, p. 22, vii.

Bankruptcy :—

(iii.) **Q. B. D.**—*Composition—Debtors Act*, 1869, *s.* 15.—A creditor who has taken an active part in procuring a composition, as, by obtaining and using the proxies of other creditors, is not a creditor who "has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends," within 32 & 33 Vict., c. 62, s. 15, and to whom, therefore, under the circumstances mentioned in the section, the debtor remains liable for the unpaid balance of his debt.—*Thorp* v. *Dakin*, 52 L.T. 856.

(iv.) **C. A.**—*Deed of Arrangement between Debtor and Some Creditors—Adjournment of Hearing of Bankruptcy Petition—Bankruptcy Act*, 1883, *s.* 7 (3).—The fact that a debtor has entered into a private arrangement with a number of his creditors is no answer to a bankruptcy petition by

a creditor who has not assented to the arrangement: it is not sufficient cause, within the above sub-section, why the petition should be dismissed; nor has the registrar authority or jurisdiction, under such circumstances, to order an adjournment of the petition as a step towards its dismissal.—*E. p. Oram; re Watson*, L.R. 15 Q.B.D. 399; 52 L.T. 785; 33 W.R. 890.

(i.) **Ch. D.**—*Power of Trustee in Liquidation to exercise debtor's Power of Appointment.*—A debtor's power to appoint cannot, after his death, be exercised by his trustee in liquidation.—*Nichols* to *Nixey*, L.R. 29 Ch. D. 1005; 52 L.T. 803; 33 W.R. 840.

(ii.) **C. A.**—*Partnership—Stockbroker—Incomplete Transfer—Reputed Ownership.*—Decision of Ch. D. (*see* Vol. **10**, p. 3, viii.) affirmed.—*Colonial Bank* v. *Whinney*, 53 L.T. 272; 33 W.R. 852.

(iii.) **Q. B. D.**—*Practice—Application by Official Receiver for Summary Administration—Bankruptcy Act*, 1883, *s.* 121—*B. R.*, 1883, *r.* 237.—The circumstance that the official receiver, in reporting to the registrar of a County Court that the property of the debtor is not likely to exceed £300, does not support his report by an affidavit, does not justify the registrar in refusing to make an order for summary administration.—*Re Horniblow; e. p. the Official Receiver*, 53 L.T. 155.

(iv.) **C. A.**—*Practice—Jurisdiction of Registrars.*—The intention of sec. 169 of the Bankruptcy Act, 1883, is, among other things, to maintain the jurisdiction of the registrar as to pending business; and that is provided for by the Bankruptcy Rules, 1883, r. 264, which is properly made in accordance with sec. 127 of the Act.—*Re Home; e. p. Edwards*, 52 L.J. Q.B. 447.

(v.) **C. A.**—*Practice—Costs of Taxation—Solicitor to Trustee in Bankruptcy—Solicitors Act*, 1843, *ss.* 37-39.—A trustee in bankruptcy is not a party entitled, under one of the above sections of 6 & 7 Vict., c. 73, to apply that a solicitor whose bill has been reduced by taxation by more than one-sixth may be ordered to pay the costs of the taxation.—*E. p. Marsh; re Marsh*, L.R. 15 Q.B.D. 340.

(vi.) **Q. B. D.**—*County Court—Judgment Summons—Transfer to Bankruptcy Court—Receiving Order—Notice to Debtor—Debtors Act*, 1869, *s.* 5—*Bankruptcy Act*, 1883, *s.* 103, *sub-ss.* 4, 5—*B. R.*, 1885, *r.* 268 (1) (*a*).—When a judgment summons for a committal has been transferred to the Bankruptcy Division of the High Court by a judge not having jurisdiction in bankruptcy, the Bankruptcy Division has not a mere ministerial act to perform, but a judicial discretion to exercise, and to decide whether a receiving order shall be made or not; and the proper course is to obtain an appointment for the hearing of the summons, when transferred; and notice of the appointment should be given to the debtor.—*Re Andrews; e. p. Andrews*, L.R. 15 Q.B.D. 335.

And see **Settlement**, p. 20, ii.

Bastardy:—

(vii.) **Q. B. D.**—*Right of Mother to Order after Twelve Months from Birth of Child.*—Payment, by the alleged father of a bastard child, after twelve months from the birth of the child, under an order obtained by guardians after, upon an application made before, the expiration of the twelve months, is not a payment upon proof of which the mother may apply for an order after the twelve months, under 35 & 36 Vict., c. 65, s. 3.—*Billington* v. *Cyples*, 52 L.T. 854.

Bill of Exchange : -

(i.) **C. A.**—*Bill Charged to Account of Cargo as Advised—Equitable Assignment—Specific Appropriation.*—A bill of exchange was drawn in the following terms:—"New York, 5 Aug., 1875. Exchange for £2,500. Sixty days after sight of this first of exchange (second and third unpaid) pay to the order of Messrs. Brown, Shipley & Co. in London £2,500 sterling, value received, and charge the same to account of cheese per *Britannic* and lard per *Greece*, as advised. Messrs. Jones Brothers, London. Signed: Archibald Baxter & Co." The advice note was as follows: "We enclose bill of lading for 1,558 boxes [of cheese] per *Britannic*, and against these and lard per *Greece* we value on you at sixty days' sight for £2,500, favour Brown, Shipley & Co." The course of business between the drawers and drawees was that the latter carried the proceeds of the sales of cargoes to a general account. *Held*, (1) that the holder of the bill had no specific charge upon the cheese and lard, and (2) that there was no appropriation of the cheese and lard to meet the bill.—*Brown* v. *Kough*, L.R. 29 Ch. D. 848; 52 L.T. 878; 34 W.R. 2.

(ii.) **C. A.**—*Specific Appropriation—Marginal Advice—Stoppage in Transitu.*—Notice to consignee to hold proceeds of goods.—Decision of Ch. D. (*see* Vol. **10**, p. 4, vi.) affirmed.—*Phelps* v. *Comber*, L.R. 29 Ch. D. 813; 52 L.T. 873; 33 W.R. 829.

Bill of Sale :—

(iii.) **C. A.**—*Assignment of Future-Acquired Chattels—Equitable Estate—Legal Estate without Notice.*—By a bill of sale, made in February, 1881, to secure repayment of the purchase-money of his business and stock-in-trade as a jeweller, M. assigned to the plaintiff his goodwill and interest in the business, the stock-in-trade and effects in his shop, and the stock-in-trade and effects which should be brought into the shop during the continuance of the security. M. pledged jewellery, part of his stock-in-trade, acquired by him after the execution of the bill of sale, with the defendant, a pawnbroker, to secure an advance of money. At the time of the pledging, the defendant had no notice of the equitable title of the plaintiff: *Held*, that the defendant was entitled to retain the jewellery as against the plaintiff.—*Joseph* v. *Lyons*, L.R. 15 Q.B.D. 280.

(iv.) **Q. B. D.**—*Bills of Sale Act* (1878) *Amendment Act*, 1882, *s.* 9.—A bill of sale is not void, as being at variance with the form in the schedule to the above Act, because the interest is stated in the form of a lump sum, or because the rate of interest varies from month to month.—*Thorp* v. *Cregeen*, 33 W.R. 844.

Bread.—*See* Criminal Law, p. 8, ii.

Building Society :—

(v.) **C. A.**—*Overdrawing Banking Account, where no Power to Borrow—Ratification—Payments to Withdrawing Members—Priority of Securities.*—A benefit building society was not authorized by its rules to borrow money, but was authorized to open a banking account. The directors overdrew its banking account to a large amount. Annual balance-sheets, showing the amounts due to the bankers, were sent to all the members and adopted at the annual meetings. *Held* (1) that the liquidators of the company could recover from the bankers all moneys paid in to the banking account and applied by the bankers towards discharging the balance of the overdrawn account, although so applied at the request of the directors, made under a mistake of law; (2) that the society had not ratified the acts of the directors; (3) that the bankers

were entitled to stand in the place of members who had given notice of withdrawal and been paid off out of moneys advanced by the bankers, and to be allowed in account the amounts which would be payable to such members, if they had not been paid off; (4) that the bankers were entitled to the benefit of securities taken by the society in respect of advances out of the moneys advanced by the bankers, according to the order of priority of such securities.—*Blackburn and District Benefit Building Society* v. *Cunliffe*, L.R. 29 Ch. D. 902.

(i.) **Ch. D.**—*Winding-up—Priorities of Members—Interest.—Held*, on the construction of the rules of a building society ordered to be wound up under the Companies Acts, that members who had given notice of withdrawal prior to the commencement of the winding-up were entitled to be repaid the amount of their shares in priority to other members, according to the respective dates of their notices; and that those of the members whose shares were fully paid up at the dates of their respective notices were entitled to interest on the amounts due to them, in the same order of priority, from the time when such shares were fully paid up, or from the time of the payment of the last dividend, until the time of the payment of the amount due to them.—*Re Middlesboro', Redcar, Saltburn-by-the-Sea and Cleveland District Permanent Benefit Building Society* (2), 53 L.T. 203.

Carrier:—

(ii.) **Q. B. D.**—*Liability for Freight.*—The agents of the consignors of goods, delivered to a railway company to be forwarded to E. & Co. as consignees, signed a consignment note by which the freight was to be paid by the consignees. The consignees refused to pay it. *Held*, that the consignors were liable for the freight.—*Great Western Ry. Co.* v. *Bagge*, 53 L.T. 225.

And see Railway.

Charity.—*See* Will, p. 28, i.

Cheque:—

(iii.) **C. A.**—*Crossed Cheque—Unauthorized Signature p. p.—Liability of Collecting Banker.*—Decision of Q.B.D. (*see* Vol. 10, p. 33, ii.), reversed as to the 7th cheque.—*Bissell* v. *Fox*, 53 L.T. 193.

Company:—

(iv.) **C. A.**—*Authority of Secretary to make Representations.*—The secretary of a company is not its agent to make fraudulent misrepresentations to an applicant for shares.—*Newlands* v. *National Employers' Accident Association*, 54 L.J. Q.B. 428; 53 L.T. 242.

(v.) **Ch. D.**—*Company's Lien on Shares—Mortgage of Shares—Priority—Consideration—Contract not to be performed within a Year.*—G. mortgaged to M. shares in a company whose articles provided that they should have a paramount lien upon the shares of each member for his debts to them; and notice of the charge was duly given to the company. G. afterwards, in consideration of the company foregoing proceedings against him in respect of misrepresentations which he was alleged to have made, guaranteed to the company payment of certain dividends for 90 years. In an action against the company by M. for a declaration that he was entitled to a first charge upon the shares mortgaged to him: *Held*, that his mortgage was entitled to priority over the rights of the company under the guarantee.—*Miles* v. *New Zealand Alford Estate Co.*, 53 L.T. 219.

(i.) **Ch. D.**—*Debentures—Power of Company to deal with Property.*—Contract for the sale of land by a company. The company had issued debentures which were made a charge on all the property of the company, but with the restriction that such charge was to be a floating security until default in payment of the principal or interest. *Held*, that the purchaser was entitled to reasonable evidence that there had been no such default.—*Re Horne and Hellard*, L.R. 29 Ch. D. 736.

(ii.) **Ch. D.**—*Companies Act*, 1862, *s.* 165.—A director of a company had received from the promoters of the company, in consideration of his undertaking to assist them in promoting the company, £1,000, wherewith to buy shares to qualify himself as director. He bought the shares with the money and assisted in promoting the company. The company eventually went into liquidation. *Held*, that he was liable to account to the liquidator for the value of the shares at the time when he received the money, with interest at 5 *per cent.*—*Re Drum Slate Quarry Co.*, 53 L.T. 250.

(iii.) **Ch. D.**—*Shares issued as fully Paid-up—Sufficiency of Registered Contract—Companies Act*, 1867, *s.* 25.—It is not necessary, for shares to be deemed not to have been issued subject to the payment of the whole amount thereof in cash, that the registered contract relating to them should specify their denoting numbers.—*Re Delta Syndicate; Forde's Case*, 54 L.J. Ch. 724; 33 W.R. 839.

(iv.) **Ch. D.**—*General Meeting—Special Resolution—Voting—Companies Act*, 1862, *s.* 51.—For proxies to count, in the passing of a special resolution, the chairman must take a poll, and not merely a show of hands, at the general meeting.—*Re Caloric Engine and Siren Fog Signals Co.*, 52 L.T. 846.

(v.) **C. A.**—*Memorandum—Preference and Ordinary Shares—Subsequent Resolutions.*—Decision of Ch. D. (*see* Vol. 10, p. 34, iii.) affirmed.—*Ashbury* v. *Watson*, 33 W.R. 882.

(vi.) **Ch. D.**—*Liquidation—Priority—Directors' Fees—Companies Act*, 1862, *s.* 38, *sub-s.* 7.—The articles of association of a company provided that any director should vacate his office, if he ceased to be a member. The company went into liquidation. *Held*, that a sum due to a director for fees was a sum due to him in his character of member within the above sub-section and must, therefore, be postponed until the claims of outside creditors had been paid in full.—*Re Leicester Club and County Race Course Co.*, 34 W.R. 14.

Composition Deed:—

(vii.) **C. A.**—*Fraudulent Preference—Effect upon Deed.*—It is an implied condition of a composition deed, whether made pursuant to the provisions of a statute or not, that all the creditors come in upon equal terms; and if that condition be broken by a fraudulent preference of some, the deed becomes voidable at the instance of any other, of the creditors who signed it. Payment, by a stranger, with the debtor's knowledge, to some creditors, of certain parts of their debts, to induce them, and inducing them, to sign a composition deed, is a fraudulent preference which will render the deed voidable.—*Re Milner; e. p. Milner*, 54 L.J. Q.B. 425; 33 W.R. 867.

Conditions of Sale.—*See* Vendor and Purchaser, p. 24, vi.; 25, i.

Contract:—

(viii.) **Ch. D.**—*Consideration—Statute of Frauds.*—In 1881, H. signed and forwarded to the secretary of the Congregational Union a document headed "Congregational Union of England and Wales—Jubilee Fund,"

whereby he promised to give £20,000, in five equal annual instalments, for liquidation of chapel debts. In 1881—1883, he paid to the fund, in fulfilment of his promise, sums amounting to £12,000. In 1884 he died. The Congregational Union having claimed the remaining £8,000 from his executors: *Held*, that there was no enforceable contract; first, because there was no consideration for the promise; secondly, because there was no sufficient memorandum in writing.—*Re Hudson; Creed* v. *Henderson*, 54 L.J. Ch. 811; 33 W.R. 819.

And see Carrier. Company, p. 5, v. Railway.

Conversion :—

(i.) **Ch. D.**—*Sale in Partition Action—Lunacy of Person Absolutely Entitled to the Proceeds.*—An order was made in 1880 for sale, instead of partition, of the real estate of N., an intestate; and in 1882 one-fourth part of the proceeds of sale, which had been paid into Court, was ordered to be paid to P., one of the four co-heiresses of the intestate. P. left the money in Court and took no further steps concerning it. In 1884 she was declared a lunatic; and she died in the same year. *Held*, that the fund belonged to her personal representatives, and not to her heir-at-law.—*Re Pickard; Turner* v. *Nicholson*, 53 L.T. 293.

Copyhold :—

(ii.) **Ch. D.**—*Custom—Fine on Admission.*—According to the custom of a manor, new purchasers of customary tenements paid a fine on a first admission, but not upon a subsequent admission to other customary tenements; by an uniform practice persons claiming different tenements under one disposition were admitted to all the tenements at once, paying fines in respect of all. A testator devised to the plaintiffs several copyhold tenements within the manor. *Held*, that the plaintiffs were not entitled to be admitted to one of the tenements only, so as to subsequently obtain admittance to the other tenements without paying fines.—*Johnstone* v. *Earl Spencer*, 34 W.R. 10.

Corporation :—

(iii.) **H. L.**—*Borrowing Powers—Ultra Vires.*—Whenever a company is created by Act of Parliament with reference to the purposes of the Act, and solely with a view to carrying those purposes into execution, the powers which it may use must either be expressly conferred by the Act or derive by reasonable implication from its provisions. An Act passed in 1851 authorized the R. D. company, from time to time, as they should think proper or see occasion, but not further or otherwise, to borrow, "for all or any of the purposes of this or the said recited Acts or any of them," money not exceeding a specified amount; and in the event of any part of such money being repaid, to borrow again the amount of money repaid, and so *toties quoties*, but so that there should not be owing at any one time a greater sum than the amount specified. The recited Acts, which included all the previous statutes relating to the company, said nothing expressly, either to empower the company to borrow, or to forbid them to do so. *Held*, that after the passing of the Act of 1851 the company had no power to borrow beyond the amount specified.—*Wenlock (Baroness)* v. *River Dee Co.*, L.R. 10. App. Cas. 354; 53 L.T. 63.

Costs.—*See* Administration, p. 1, ii., iv. Bankruptcy, p. 3, v. Lands Clauses Act, p. 12, v. Practice, p. 15, iii.-ix.; 17, iv. Solicitor, p. 22, vi., vii.; 23, i., ii.

Counsel.—*See* Practice, p. 15, v.

Covenant.—*See* Highway. Limitation of Actions. Vendor and Purchaser, p. 24, v., vi.

Criminal Law:—

(i.) **C. C. R.**—*False Pretences—Representation of Ownership.*—S. sold the stock on his farm to C., and received the price, nothing being said, either about a bill of sale which he had given over the stock, and which had been registered, or otherwise about the ownership of the stock: *Held*, that S. was guilty of obtaining money by false pretences.—*R. v. Sampson*, 52 L.T. 772.

(ii.) **Q. B. D.**—*Sale of Bread—Delivery from Cart without Beam and Scales—6 & 7 Will. IV., c. 37, s. 7.*—The baker cannot be convicted of delivering bread without beam and scales, where the bread is sold, weighed and appropriated to the customer in the shop, and afterwards, to oblige the customer, delivered at the customer's house from the baker's cart.—*Daniel v. Whitfield*, L.R. 15 Q.B.D. 408; 54 L.J. M.C. 134; 33 W.R. 905.

And see Public Health Act.

Damages.—*See* Ship, p. 21, vi.; 22, ii., v. Vendor and Purchaser, p. 25, i.

Deed:—

(iii.) **C. A.**—*Construction.*—The words "all my hereditaments situate in A." may be sufficient to pass an advowson, but are not apt words for that purpose.—*Crompton v. Jarratt*, 33 W.R. 913.

And see Advowson. Landlord and Tenant, p. 12, iii.

Distress.—*See* Landlord and Tenant, p. 11, v. Water Rate.

Domicile:—

(iv.) **Ch. D.**—*Service in the Army.*—Service in the army does not induce a change of domicile of choice any more than of domicile of origin.—*Re Macreight; Preston v. Macreight*, 53 L.T. 146; 33 W.R. 838.

And see Will, p. 27, vii.

Easement:

(v.) **Q. B. D**—*Right of Way—Life Estate in servient Tenement—Prescription Act*, 1832, *s.* 8.—"*Reversion.*"—"Reversion," in the above section, does not include "remainder."—*Symons v. Leaker*, 54 L.J. Q.B. 480; 53 L.T. 227; 33 W.R. 875.

Ecclesiastical Law:—

(vi.) **Ch. D.**—"*Benefice with Cure*"—13 *Eliz. c.* 20.—An annuity granted, by an Order in Council under the Union of Benefices Act, 1860, part of a scheme for the union of two benefices in London, to the retiring incumbent and his assigns, during the joint lives of himself and the incumbent designate of the united benefices, so long as he should, in person, or by approved substitute, perform the duties of curate, under the style of vicar in charge: *Held*, not to be a benefice with cure within the above statute, and to be alienable.—*M'Bean v. Denne*, 33 W.R. 924.

(vii.) **Q. B. D.**—*Dilapidations — Repairs by Sequestrator — Ecclesiastical Dilapidations Act*, 1871.—When there has been a report by the diocesan surveyor, authorizing repairs to glebe buildings, under the above Act, a sequestrator of the benefice has no authority to expend such sums on repairs as he may think expedient, without regard to the surveyor's report; and sums so expended by him may be disallowed in his accounts.—*Kimber v. Paravicini*, L.R. 15 Q.B.D. 222; 54 L.J. Q.B. 471; 53 L.T. 299; 33 W.R. 907.

Education:—

(i.) **Q. B. D.**—*Board Schools—"Causing Child to Attend"—Non-payment of Fees—Elementary Education Act,* 1870, *s.* 74.—A parent does not "cause his child to attend school" who sends his child to the school, but does not pay the school fees; although the child be admitted to the school and receive instruction.—*London School Board* v. *Wood,* L.R. 15 Q.B.D. 415.

Election.—*See* Husband and Wife, p. 10, i.

Evidence:—

(ii.) **Ch. D.**—*Declaration of Deceased Person—Baptismal Register—Entry of date of birth.*—A declaration contained in a business letter written by a reputed daughter as amanuensis to her reputed father is admissible in evidence after the reputed father's death upon a question of the legitimacy of another of his reputed daughters.—If a party puts in evidence a copy of a certificate of baptism which contains an entry of the date of the birth of the child baptized, made by the officiating clergyman, when the entry of the baptism was made, the fact of entry can be taken into consideration in determining the date of the child's birth.—*Re Turner; Glenister* v. *Harding,* L.R. 29 Ch. D. 985.

And see Public Health Act. Practice, p. 15, x.

Executor.—*See* Administration, p. 1, v. Will, p. 26, i.

Fixtures:—

(iii.) **C. A.**—*Mortgagor and Mortgagee—Driving Belts Used in Working Machinery—Bills of Sale Act,* 1854.—When machinery is so fixed to the freehold as to have become part of it, the essential parts of such machinery are part of the freehold, and pass under a mortgage of it.—*Sheffield and S. Yorkshire Permanent Benefit Building Soc.* v. *Harrison,* L.R. 15 Q.B.D. 358.

Foreign Law.—*See* Will, p. 27, vii.

General Average:—

(iv.) **H. L.**—*Expenses of Re-Shipping Cargo.*—Decision of C. A. (*see* Vol. **9**, p. 114, iii.) affirmed.—*Svendsen* v. *Wallace,* L.R. 10 App. Cas. 404; 54 L.J. Q.B. 497; 52 L.T. 901.

Habeas Corpus:—

(v.) **Q. B. D.**—*Persons Subject to Military Law as Soldiers—Army Act,* 1881, *s.* 176, *sub.-s.* 4—An army pensioner employed as canteen-sergeant is liable to be tried by court-martial for receiving bribes.—*E. p. Flint,* 33 W.R. 936.

Highway:—

(vi.) **C. A.**—*Dedication—"Highway Repairable by the Inhabitants at Large"—Public Health Act,* 1875, *s.* 150—*Covenant to Repair Road, whether Running with Land—Notice.*—A highway constituted under a trust deed giving the trustees power to charge tolls if they like, and change them when they like, is not dedicated to the public, and is not, therefore, "a highway repairable by the inhabitants at large" within the above section.—The benefit of a mere covenant to repair a road does not descend to the assignee of a piece of land abutting on only a small portion of the road; nor does the burden of it descend upon an assignee of the road, even taking with notice.—*Austerberry* v. *Corporation of Oldham,* L.R. 29 Ch. D. 750; 33 W.R. 807.

Husband and Wife :—

(i.) **Ch. D.**—*Postnuptial Settlement—Restraint on Anticipation—Married Women's Property Act*, 1882, *ss.* 5, 19—*Election.*—By a postnuptial settlement, made in 1847, which was void as against the wife, all property to which she or the husband in her right should become entitled was to be settled upon trusts for her for life for her separate use without power of anticipation and after her death for the husband and issue. During the coverture, and before 1883, property of the wife was reduced into possession by the husband and settled upon the trusts of the settlement. In 1883 the wife became entitled to personalty in possession. *Held* (1), that the wife was entitled to such personalty, by virtue of sec. 5 of the above Act, for her separate use, against the settlement, sec. 19 of the Act referring only to binding settlements; (2) that she was put to her election; (3) that she was not bound to submit her election to the Court.—*Re Queade's trusts*, 54 L.J. Ch. 786; 53 L.T. 74; 33 W.R. 816.

(ii.) **Ch. D.**—*Married Women's Property Act*, 1882, *s.* 5—*Interest in Remainder before, in Possession after, the Commencement of the Act.*—A woman married before the commencement of the above Act is not entitled, under the 5th section, to hold as a *feme sole* property to which she was entitled in remainder before, but which only falls into possession after, the commencement of the Act.—*Re Tucker; Emmanuel* v. *Parfitt*, 54 L.J. Ch. 874; 52 L.T. 923; 33 W.R. 932; *Re Adams's trusts*, 54 L.J. Ch. 878; 53 L.T. 198; 33 W.R. 834.

(iii.) **Ch. D.**—*Agreement with a view to Separation—Effect of Reconciliation &c.*—Under an agreement made with a view to a judicial separation, the wife was to be permitted to enjoy the use of certain furniture during her life. Some time after a judicial separation had been decreed the parties became reconciled, and cohabited again. *Held*, that thereupon the wife's right to the use of the furniture ceased.—*Nicol* v. *Nicol*, 53 L.T. 141.

(iv.) **Ch. D.**—*Covenant to Settle After-Acquired Property—Judicial Separation—Divorce Act*, 1857, *ss.* 7, 21, 25, 26.—A covenant in a marriage settlement to settle property which the wife, or the husband in her right, might acquire "during the intended coverture": *Held* to be inoperative upon property to which the wife became entitled after a decree for a judicial separation.—*Dawes* v. *Creyke*, 53 L.T. 292; 33 W.R. 869.

(v.) **C. A.**—*Separation Deed—Covenant to Maintain Children—Right to Sue.*—The trustees of a separation deed are trustees for the wife, and not for the children; and, therefore, the trustees declining to sue, the wife can, and the children cannot, enforce the husband's covenant to maintain the infant children.—*Gandy* v. *Gandy*, 33 W.R. 803.

(vi.) **P. D.**—*Order as to Custody of Child—Service—Sequestration.*—Where an order as to the custody of a child has been disobeyed, sequestration can issue without a previous application for an attachment; and proof of personal service of the order is unnecessary, if the Court be satisfied that the disobedience is of a contumacious character.—*Allen* v. *Allen*, 54 L.J. P.D. & A. 77; 33 W.R. 825.

And see Practice, p. 15, iii., iv. Settlement, p. 20, ii., iv.

Infant :—

(vii.) **C. A.**—*Appointment of Guardian to Infant domiciled Abroad.*—Decision of Ch. D. (*see* Vol. 10, p. 101, v.) affirmed.—*Re Willoughby*, 33 W.R. 850; (Ch. D.) 52 L.T. 846.

And see Administration, p. 1, ii. Practice, p. 14, ix.

Injunction :—

(i.) **Ch. D.**—*Assuming Business Name of Another.*—The plaintiffs, a firm of advertising agents trading as Street & Co., had for years received telegrams addressed to them "Street, London." The defendants, a recently established bank, registered "Street, London," as their cypher in the telegraphic department of the Post Office. Telegrams addressed to the plaintiffs having, in consequence, found their way to the defendants, the plaintiffs moved for an injunction restraining the defendants from using the address in question. *Held*, that, there having been no invasion of property, or slander of title, but only inconvenience, the defendants had done nothing unlawful, and the motion must be refused.—*Street* v. *Union Bank of Spain and England*, 53 L.T. 262; 33 W.R. 901.

(ii.) **Q. B. D.**—*Conspiracy—Boycotting.*—The defendants and other ship-owners formed a ring or "conference," and offered to allow to shippers agreeing to confine their shipments to "conference steamers" a rebate upon the freight charged; such shippers, if they shipped by an outside steamer, to lose their right to the rebate. Upon the application of an outside shipowner: *Held*, that, although an indictment would lie for a conspiracy to boycott, there was not a case for an *interim* injunction.—*Mogul S.S. Co.* v. *M'Gregor*, 53 L.T. 268.

Insurance :—

(iii.) **C. A.**—*Marine Insurance—Craft Risk.*—The premiums on policies including craft risk being higher where the insurance was on the terms of no recourse (*i.e.*, except for negligence) against lightermen, than where the insurance was with recourse against lightermen, T., who was aware of such difference of rates, effected an open policy with H., without disclosing to him an arrangement which he had made with a certain lighterman, by which the latter was not to be liable for any loss in craft, except loss caused by his own negligence: *Held*, that the existence of the arrangement being a fact which a prudent and experienced underwriter would take into consideration in estimating the premium, T. ought to have made it known to H.; that his not having done so was evidence of such a concealment of a fact material to the risks as would vitiate the policy; and that the fact of the existence of the arrangement having been known to H.'s solicitor was immaterial.—*Tate* v. *Hyslop*, L.R. 15 Q.B.D. 368.

Interest.—*See* Building Society, p. 5, i. Practice, p. 15, ix.

Interpleader :—

(iv.) **C. A.**—*Appeal—Common Law Procedure Act*, 1860, *s.* 17—*Appellate Jurisdiction Act*, 1876, *s.* 20—*R. S. C.*, 1883, *Ord.* 57, *r*, 11.—There is no appeal from the High Court to the Court of Appeal upon the summary disposal of a claim in interpleader under the above rule.—*Waterhouse* v. *Gilbert*, 54 L.J. Q.B. 440; 52 L.T. 784.

Landlord and Tenant :—

(v.) **Q. B. D.**—*Distress—Lawfulness of Entry.*—Entry by raising a window that is partly open is not such a breaking into a house as will render a distress illegal.—*Crabtree* v. *Robinson*, L.R. 15 Q.B.D. 312; 33 W.R. 936.

(vi.) **C. A.**—*Sufficiency of Notice to Quit.*—A lease contained the following proviso: "It shall be lawful for the landlords to put an end to this present demise at the end of the first fourteen years thereof by delivering to the tenant, his executors, administrators or assigns six calendar months' notice in writing of their intention to do so." D., the lessee,

mortgaged the premises by way of sub-lease to P., who took possession and let to B. H., the assignee of the reversion, gave notice to determine the lease, in a letter sent by the post, directed to C. at his last known address; but the letter was returned without having reached C., who had disappeared and could not be found. H. then served a similar notice on P. and B. In an action of ejectment brought by H. against B.: *Held*, that H. was not entitled to recover possession of the premises.—*Hogg* v. *Brooks*, L.R. 15 Q.B.D. 256.

(i.) **C. A.**—*Ejectment—Writ of Possession, where Plaintiff's Title has Expired.*—Action to recover possession of premises the subject of an expired lease, of which the defendant had been the assignee and the plaintiff was the reversioner. After action brought, but before trial, the plaintiff's reversion, which was only for three days, expired. The plaintiff having obtained judgment to recover possession, and the defendant not having proved that any one else than the plaintiff was entitled: *Held*, that a writ of possession ought to issue.—*Knight* v. *Clarke*, L.R. 15 Q.B.D. 294; 54 L.J. Q.B. 509.

(ii.) **Q. B. D.**—*Agricultural Holdings Act*, 1883, *s.* 62.—The procedure in the matter of improvements for which a claim is made in respect of a tenancy current at the commencement of the above Act, and which were executed after that date, is under the Act.—*Smith* v. *Acock*, 53 L.T. 230.

(iii.) **C. A.**—*Lease—Construction—Reservation or Re-grant.*—The words "and also, by way of grant, and not of reservation, the exclusive right of hunting, coursing and shooting &c.," following a demise of corporeal hereditaments, followed by an exception and reservation of trees and minerals, and a reservation of liberty of ingress to cut, work and take away the trees and minerals: *Held*, upon the construction of the lease, to reserve the right of shooting &c. to the lessor.—*Houstoun* v. *Marquis of Sligo*, 52 L.T. 870.

Lands Clauses Act, 1845:—

(iv.) **Ch. D.**—*Arbitration—Notice to Treat*—8 & 9 *Vict.*, *c.* 18, *ss.* 18, 19, 25, 30.—Upon one of two arbitrators appointed under section 25 of the L. C. C. A., 1845, refusing to act, the other may proceed *ex parte* under s. 30, although no umpire has been appointed. A party entitled to notice to treat, who has not been served, cannot by adopting a notice served upon another party entitled to notice, compel the corporation which served the notice to proceed under it.—*Shepherd* v. *Mayor and Corporation of Norwich*, 53 L.T. 251; 33 W.R. 841.

(v.) **Ch. D.**—*Money paid into Court—Costs.*—An order for the re-investment of compensation money paid into Court by a railway company under the Lands Clauses Consolidation Act, 1845, providing that, for the purposes of costs of any future application, such re-investment should be treated as a permanent re-investment: *Held*, upon application for transfer to persons absolutely entitled, to mean that the company should not be subjected to the costs of any future application in respect of the moneys.—*Re Rectory of Gedling*, 53 L.T. 244.

Limitation of Actions:—

(vi.) **Ch. D.**—*Action on Covenant for Arrears of Royalties.*—By a lease of mines dated 1859 the lessees covenanted to pay royalties upon minerals from other mines carried by them over the surface: *Held*, in an action on the covenant brought against them in 1883, that, 37 & 38 Vict., c. 57, s. 8, did not apply, and they were liable to be sued for the royalties in arrear since 1866.—*Darley* v. *Tennant*, 53 L.T. 257.

And see Tithes.

Local Government:—

(i.) **H. L.**—*Streets—Paving Expenses—Road Paved and Flagged after being made Good—Towns Improvement Clauses Act,* 1847, *s.* 53.—Decision of C. A. (*see* Vol. 9, p. 67, vii.) affirmed.—*Mayor &c. of Portsmouth* v. *Smith,* L.R. 10 App. Cas. 364; 54 L.J. Q.B. 473.

And see Metropolis Management.

Lunatic:—

(ii.) **C. A.**—*Lunatic Asylums Act,* 1853, *s.* 68.—An examination by two justices, under the above section, of an alleged lunatic, not a pauper and not wandering at large, but not under proper care and control, need not be made in a judicial manner, *i.e.*, by giving the alleged lunatic notice of the charge against him and by taking the evidence on oath in his presence and giving him an opportunity of meeting the charge by counter-evidence; nor need the justices make the examination in the presence of the medical man, or *vice versâ*. But the examination by the justices must be a formal examination, and the medical man must be an independent medical man. An examination lasting only four or five minutes is not necessarily a nullity.—*R.* v. *Whitfield,* 54 L.J. M.C. 113; 53 L.T. 96.

And see Conversion. Trustee, p. 24, iii.

Metropolis Management:—

(iii.) **Q. B. D.**—*Metropolis Management Acts,* 1855 (*ss.* 78, 250) *and* 1862 (*s.* 112)—"*Street*"—"*Pavement.*"—A road open for traffic, but not yet taken over by the parish authorities, can be a "street" within the above sections 78 and 250, although also a "new street" within the above section 112; and a footway only made with gravel and kerbed may be a "pavement" within the above sections 78 and 112.—*St. John, Hampstead, Vestry* v. *Hoopel,* 33 W.R. 903.

Mortgage:—

(iv.) **Ch. D.**—*Legal Mortgage—Subsequent deposit of Deeds—Priority—Judicature Act,* 1873, *s.* 25, *sub-s.* 11.—A., a legal mortgagee, asked B., the mortgagor, a solicitor, on a variety of occasions for the deeds, but was always met with excuses. B. subsequently deposited the deeds by way of equitable mortgage with C., who had no notice of A.'s mortgage. *Held,* that A. had not been guilty of negligence amounting to fraud, and that he was entitled to foreclosure and to delivery of the deeds.—*Manners* v. *Mew,* L.R. 29 Ch. D. 725; 53 L.T. 84.

(v.) **Ch. D.**—*Agreement to charge Personalty.*—A valid charge upon personalty can be created by parol.—*Parish* v. *Poole,* 52 L.T. 35.

(vi.) **C. A.**—*Fund in Court—Second Incumbrancer with Notice—Stop-order—Priority.*—A second assignee of a fund in Court, who took his security with notice of the existing incumbrance, cannot gain priority over the first incumbrancer by obtaining a stop-order.—*Re Holmes,* L.R. 29 Ch. D. 786.

(vii.) **C. A.**—*Company—Lien on Shares—Notice of Charge—Priority.*—Decision of Ch. D. (*see* Vol. 10, p. 105, iii.) reversed.—*Bradford Bank* v. *Briggs,* 33 W.R. 887.

(viii.) **C. A.**—*Sale by Mortgagor and Mortgagee—Notice of second Mortgage—Proceeds of Sale.*—Decision of Ch. D. (*see* Vol. 10, p. 14, i.) affirmed.—*West London Commercial Bank* v. *Reliance Permanent Building Soc.,* L.R. 29 Ch. D. 954; 33 W.R. 916.

And see Company, p. 5, v. Fixtures. Partnership. Solicitor, p. 22, vi.

Mortmain:—

(i.) **Ch. D.**—*Mortgage of Harbour Dues.*—Mortgage of duties arising under an Act for improving a harbour: *Held*, to be an interest in land within 9 Geo. II., c. 36.—*Re Christmas; Martin* v. *Lacon*, 34 W.R. 8.

(ii.) **C. A.**—*Impure Personalty.*—Decision of Ch. D. as to the sum of £800 (*see* Vol. **10**, p. 14, ii.) affirmed.—*Re Watts; Cornford* v. *Elliott*, L.R. 29 Ch. D. 947; 33 W.R. 885.

And see Will, p. 28, i.

Negligence:—

(iii.) **Q. B. D.**—*Goods forwarded in defective Truck—Injury to Vendee's Servant.*—If the vendor of goods undertakes to forward them to the purchaser, and for that purpose to supply a truck or other means of conveyance, and the goods are necessarily to be unloaded from such means of conveyance by the purchaser's servants, there is a duty on the part of the vendor towards those persons who necessarily will have to unload the goods to see that the truck or other means of conveyance is in good condition and repair, so as not to be dangerous to such persons.—*Elliott* v. *Hall (Nailstone Coll. Co.)*, L.R. 15 Q.B.D. 315; 54 L.J. Q.B. 518; 34 W.R. 16.

Notice.—*See* Bill of Sale, p. 4, iii. Highway. Insurance. Mortgage, p. 13, vi.-viii.

Nuisance.—*See* Public Health Act.

Partnership:—

(iv.) **Ch. D.**—*Mortgage of Share of Partnership Business—Mortgagee's Action for Account.*—A mortgagee of the interest of a partner is entitled as against the other partners to an account of the partnership dealings only from the time of entering into possession; but if the partnership has been previously dissolved, the account will only be taken from the date of dissolution.—*Whetham* v. *Davey*, 33 W.R. 925.

Poor Law:—

(v.) **C. A.**—*Disqualification of Guardian—Salary out of Poor Rate—Clerk of Highway Board.*—Decision of Q.B.D. (*see* Vol. **10**, p. 73, iii.) affirmed. —*R.* v. *Rawlins; R.* v. *Dibbin*, L.R. 15 Q.B.D. 382.

(vi.) **C. A.**—*Settlement by Residence—Constant Absence—No Home.*—Decision of Q.B.D. (*see* Vol. **10**, p. 15, vii.) affirmed.—*R.* v. *Stepney Guardians*, 52 L.T. 959.

(vii.) **C. A.**—*Removal—Settlement—Paupers above 16.*—Decision of Q.B.D. (*see* Vol. **10**, p. 108, i.) affirmed.—*R.* v. *Guardians of St. Mary, Islington; re Davis*, L.R. 15 Q.B.D. 339; (Q B.D.) 54 L.J. M.C. 110.

Power:—

(viii.) **Ch. D.**—*Special Power of Appointment—Exercise by Will—Intention.*—A devise, to an object of a special power of appointment, of property subject to the power: *Held*, there being no other property which could pass by the devise, to be an exercise of the power.—The fact that a devise of part of property subject to a power is intended to be an exercise of the power, is evidence of an intention that the devise of another part of such property should also be an exercise of the power.—*Re Wait; Workman* v. *Petgrave*, 33 W.R. 930.

And see Bankruptcy, p. 3, i. Will, p. 27, iii.

Practice:—

(ix.) **Ch. D.**—*Affidavit of Documents—Next Friend of Infant—R. S. C., 1883, Ord. 31, r. 12.*—There is no jurisdiction to order the next friend of an infant to make an affidavit of documents.—*Dyke* v. *Stephen*, 33 W.R. 932.

(i.) **C. A.**—*Alteration of Record—R. S. C.*, 1883, *Ord.* 28, *r.* 11.—Where an order has been passed and entered otherwise than in the manner authorized by the rules, the Court will remove the irregularity by striking it out.—*Blake* v. *Harvey*, L.R. 29 Ch. D. 827.

(ii.) **C. A.**—*Appeal—Creditor's Action against Executor—Appeal by Residuary Legatee.*—A residuary legatee cannot appeal against an order for administration obtained by a creditor against the executor.—*Re Young; Doggett* v. *Revett; Vollum* v. *Revett*, 33 W.R. 880.

(iii.) **Ch. D.**—*Costs—Married Woman Plaintiff—Security—Married Women's Property Act*, 1882, *s.* 2 (1).—A married woman without separate estate, suing alone, will not be required to give security for costs.—*Re Isaacs; Jacob* v. *Isaac*, 33 W.R. 845.

(iv.) **C. A.**—*Costs—Action by Executrix and her Husband—Liquidation of Husband.*—An action was commenced, before the Married Women's Property Act, 1882, by V. and his wife as executrix. Judgment was delivered, dismissing the action with costs, in 1883. V. had in the meantime filed a petition for liquidation and obtained his discharge. He had no beneficial interest in the action; but he allowed it to stand for hearing. *Held*, that the order against him, dismissing the action with costs, was a proper order. — *Vint* v. *Hudspeth*, 54 L.J. Ch. 844; 52 L.T. 774.

(v.) **C. A.**—*Costs—Taxation—Costs of Third Counsel.*—Decision of Q.B.D. (*see* Vol. 10, p. 110, i.) affirmed.—*Re Broad & Broad*, L.R. 15 Q.B.D. 420; 52 L.T. 888.

(vi.) **C. A.**—*Costs—Sale in Partition Action—Conveyance—Solicitors' Remuneration Act*, 1881, *s.* 2, *G. O.*, *August*, 1882, *r.* 2.—On a sale, in a partition action, of property vested in tenants in common, the parties other than the one who has the conduct of the sale are entitled to have the conveyance perused on their behalf by separate solicitors, and the costs of such perusal are chargeable as costs in the action.—*Humphreys* v. *Jones*, 34 W.R. 1.

(vii.) **C. A.**—*Costs—Appeal—Preliminary Objection—Notice.*—As a matter of professional courtesy, a solicitor who knows of a preliminary objection to an appeal, which he intends to raise, ought to inform his opponent of it without delay; but his omission to do so is not a sufficient reason why the respondent should be deprived of the costs of the appeal. —*E. p. Shead; re Munday*, L.R. 15 Q.B.D. 338.

(viii.) **Q. B. D.**—*Costs—City of London Court*—15 & 16 *Vict.*, *c.* LXXVII., *ss.* 74, 81—*County Courts Act*, 1867—45 & 46 *Vict.*, *c.* 57, *s.* 5.—The judge of the City of London Court has no jurisdiction to award costs on the £100 scale, without certifying for them in accordance with 45 & 46 Vict., c. 57, s. 5.—*Howard* v. *Graves*, 52 L.T. 858.

(ix.) **Ch. D.**—*Costs—Interest.*—In the absence of any special order, interest at the rate of 4 *per cent. per annum* is payable on the costs of an action from the date of the judgment, and not only from the date when the taxing master's certificate is filed.—*Re London Wharfing and Warehousing Co.*, 53 L.T. 112; 33 W.R. 836.

(x.) **Ch. D.**—*Enforcement of Undertaking.* — Case not falling within Ord. 42, r. 30, where the Court enforced an undertaking by allowing the plaintiff to do work, with liberty to apply that the defendant might pay the expenses.—*Mortimer* v. *Wilson*, 33 W.R. 927.

(xi.) **Ch. D.**—*Evidence—Default of Appearance—Specific Performance—Proof of Agreement.*—In an action for specific performance, the plaintiff is not relieved, by the defendant's default of appearance, from the necessity of proving the agreement alleged in the statement of claim.—*Holmes* v. *Shaw*, 52 L.T. 797.

(i.) **P. D.**—*Interrogatories—Deposit—R. S. C.*, 1883, *Ord.* 31, *r.* 26.—Motion by the plaintiff in a co-ownership action for an order dispensing with security for the costs of his interrogatories. He proposed to deliver interrogatories to each of 34 different defendants appearing by the same solicitor. *Ordered*, that he should pay into Court £5, and 10s. for every folio in excess of five.—*The Whickham*, 53 L.T. 236.

(ii.) **C. A.**—*Interrogatories—Libel.*—The defendant in an action for libel may be interrogated as to whether the handwriting upon a document not the document in question in the cause is his.—*Jones* v. *Richards*, L.R. 15 Q.B.D. 439.

(iii.) **C. A.**—*Interrogatories—Adversary's Case.*—By agreement between the parties, interrogatories settled by the Court.—*Bidder* v. *Bridges* (see Vol. 10, p. 75, ii.), 54 L.J. Ch. 798.

(v.) **C. A.**—*Jurisdiction of Chancery Division—Action for less than £10.*—An action cannot be maintained in the Chancery Division in respect of a less sum than £10.—*Westbury-on-Severn Sanitary Authority* v. *Meredith*, 52 L.T. 839.

(v.) **C. A.**—*Originating Summons—Time for Appealing—"Action"—Judicature Act*, 1873, *s.* 100—*R. S. C.*, 1883, *Ord.* 1, *r.* 1; *Ord.* 2, *r.* 1; *Ord.* 55; *Ord.* 58, *r.* 15; *Ord.* 71, *r.* 1.—It is not necessary that an appeal from a final order made upon an originating summons should be brought within 21 days.—*Re Fawsitt; Galland* v. *Burton*, 53 L.T. 271.

(vi.) **Q. B. D.**—*Parties—R. S. C.* 1883, *Ord.* 16, *r.* 11—*Stay of Proceedings.*—The above rule providing that no person shall be added as a plaintiff without his consent in writing, the Court will not stay proceedings until the joinder as plaintiff of a person who has not consented.—*Jackson* v. *Krüger*, 54 L.J. Q.B. 446; 52 L.T. 962.

(vii.) **C. A.**—*Payment into Court—R. S. C.*, 1883, *Ord.* 22, *rr.* 5, 6—*Supreme Court Funds Rules*, 1884, *rr.* 30, 44.—Where the defendant pays money into Court, and pleads denying liability, but not signifying the payment into Court, the plaintiff will not be allowed, having taken the money out of Court, to retain it and proceed with the action.—*Re Earl of Stamford; Savage* v. *Payne*, 33 W.R. 909.

(viii.) **Ch. D.**—*Points of Law—R. S. C.*, 1883, *Ord.* 25, *r.* 2.—The plaintiffs brought an action to have it declared that their construction of a certain agreement was the correct one, and for an account upon the footing of such declaration. The defendants pleaded that the agreement was invalid, or, if not invalid, was no longer binding on them, and counter-claimed cancellation of the agreement, and other accounts. The plaintiffs replied, joining issue, re-asserting the validity of the agreement, and contending that, if originally invalid, it had been rendered binding by statute. *Held*, that the plaintiffs were entitled to have the points of law raised by their reply set down for hearing before the trial.—*L. C. & D. Ry. Co.* v. *S. E. Ry. Co.*, 53 L.T. 109.

(ix.) **Ch. D.**—*Proceedings in Lieu of Demurrer—R. S. C.*, 1883, *Ord.* 25, *r.* 4.—A defendant who has put in a defence to an original statement of claim cannot have the plaintiff's amended statement of claim, which alleges no new matter and prays for no new relief against him, struck out as not disclosing a reasonable cause of action.—*Jenkins* v. *Rees*, 33 W.R. 929.

(x.) **C. A.**—*Preliminary Accounts and Inquiries—R. S. C.*, 1883, *Ord.* 33, *r.* 2.—The above order is not intended to authorize the sending of a whole case to chambers, but only the directing of such accounts and inquiries as are subsidiary to determining the rights of the parties.—*Garnham* v. *Skipper*, L.R. 29 Ch. D. 566.

(i.) **C. A.**—*Production of Documents—Privilege.*—Decision of Q.B.D. (*see* Vol. **10**, p. 113, i.) affirmed.—*London and Yorkshire Bank* v. *Cooper*, 54 L.J. Q.B. 495.

(ii.) **Ch. D.**—*Receiver before Probate—Jurisdiction—Judicature Act*, 1873, *s.* 25, *sub-s.* 8.—It is not necessary that there should be a *lis pendens*, to justify the making of an order for a receiver of the estate of a deceased person before grant of probate or administration; but applications for such orders, savouring, as they do, of the business assigned to the Probate Division, will be discouraged in any other division.—*Re Parker; Dearing* v. *Brooks*, 54 L.J. Ch. 694.

(iii.) **C. A.**—*Sale instead of Partition—Partition Act*, 1868, *s.* 3.—The Court will not, in the exercise of its discretion, order a sale instead of partition, where the evidence only goes to show that the time for selling the property is a good one.—*Re Dyer; Dyer* v. *Painter*, 33 W.R. 806.

(iv.) **C. A.**—*Security for Costs of Counter-claim—Defendant out of Jurisdiction.*—When claim and counter-claim arise out of different matters, the Court is entitled to require the defendant, if out of the jurisdiction, to give security for the plaintiff's costs of the counter-claim; and where the only issue remaining on the record is an issue on the counter-claim, the Court will require such defendant to do so.—*Sykes* v. *Sacerdoti*, L.R. 15 Q.B.D. 423 (Q.B.D.: 53 L.T. 150).

(v.) **Ch. D.**—*Sequestration of Corporate Property—R. S. C.*, 1883.—The defendant corporation having wilfully disobeyed a judgment ordering that they should be restrained from further polluting a certain pool, but that the operation of the injunction should be suspended for three months, the plaintiff moved, under R. S. C., 1883, Ord. 42, r. 31, for sequestration against their property. No such memorandum as to the time when the defendants would become liable to process of execution as is mentioned in Ord. 41, r. 5, had been endorsed upon the copy of the judgment served upon them; nor had copies of the affidavits intended to be used at the hearing of the motion been served with the notice of motion. Before the hearing of the motion, the defendants remedied the nuisance. *Held*, (1) that Ord. 41, r. 5, applies only to mandatory, and not to prohibitive, judgments, and that therefore the endorsement as to time was not required; (2) that Ord. 52, r. 4, ought not to be read so as to include a writ of sequestration, and consequently that it was not obligatory upon the plaintiff to serve copies of the affidavits; (3) that, Ord. 43, r. 6, not applying to a negative order, the plaintiff was right (apart from Ord. 42, r. 31) in applying for leave to issue a writ of sequestration; and (4) that, as the case involved such important points of practice that it must have eventually been argued in Court, the plaintiff was right in coming to the Court immediately, instead of first proceeding by summons in chambers.—*Selous* v. *Croydon Rural Sanitary Authority*, 53 L.T. 209.

(vi.) **Ch. D.**—*Service Out of Jurisdiction—R. S. C.* 1883, *Ord.* 11, *r.* 1 (*f*).—It is not necessary, for Ord. 11, r. 1 (f), to apply, that the action should be solely for an injunction.—*Lisbon-Berlyn Gold Fields* v. *Heddle*, 52 L.T. 796.

And see Administration, p. 1, ii.-iv. Arbitration. Bankruptcy, p. 3, iii.-vi. Evidence. Habeas Corpus. Husband and Wife, p. 10, vi. Infant. Injunction. Interpleader. Landlord and Tenant, p. 13, i., ii. Lands Clauses Act. Ship, p. 22, iv., v. Solicitor, p. 22, vi.

Prescription.—*See* Easement.

Principal and Agent:—

(i.) **C. A.**—*Contract for Purchase of Bank Shares—Numbers not Specified—Broker's Right to Indemnity—Custom of Stock Exchange—Notice.*—Decision at N. P. (*see* Vol. 10, p. 76, vi.) affirmed.—*Perry* v. *Barnett*, L.R. 15 Q.B.D. 388; 54 L.J. Q.B. 466.

And see Company, p. 5, iv. Wager.

Priority:—

(ii.) **Ch. D.**—*Conveyancing Act*, 1882, *s.* 3—*Purchaser for Value without Notice—Trustee—Improper Retention of Investment*—The residuary estate of a testatrix who died in 1874 consisted of a mortgage, for £5,000, of leaseholds of a character unfit for investment or retention by trustees. The will directed the trustees and executors, of whom A. was one, to sell and convert the residue as soon as conveniently might be; the ultimate trusts of the residue being for the benefit of A.'s children, with a declaration that it might be "paid over to the parent or parents, guardian or guardians, of such children." In 1878, A. and B., the remaining trustees, assigned the mortgage debt and security, as persons to whom the money belonged on a joint account, to themselves and C., a new trustee, the deed of transfer not disclosing any trust; and in 1881, A., B. and C. assigned them to A. by a deed which recited, contrary to the fact, that A. had paid off the mortgage, and which was endorsed with a receipt for the money. In December, 1882, A., as beneficial owner, assigned the leaseholds to E., to secure £2,500. E. made no investigation of A.'s title on this occasion. *Held*, that E. had priority over A.'s children; and that B. and C. were guilty of a breach of trust.—*Earl of Gainsborough* v. *Watcombe Terra Cotta Clay Co.*, 53 L.T. 117.

And see Building Society, p. 4, v., 5, i. Company, p. 5, v., 6, vi. Mortgage, p. 13, iv., vi., vii.

Probate.—*See* Will, p. 25, iv.

Public Health Act, 1875:—

(iii.) **Q. B. D.**—*Nuisance—Smoke.*—Upon an information under 38 & 39 Vict., c. 55, s. 91, sub-s. 7, against the proprietor of a brewery for allowing the chimney of his brewery to send forth black smoke in such a quantity as to be a nuisance, the defendant is not allowed to call evidence as to the construction of the chimney.—*Weekes* v. *King*, 53 L.T. 51.

And see Highway.

Railway:—

(iv.) **Q. B. D.**—*Effect of Conditions in Time-tables.*—The defendants, a railway company, issued to the plaintiff a ticket by a train timed by them to leave Durham at 2.11 p.m. for "Belfast, *viâ* Leeds, Midland Railway and Barrow," "subject to regulations in time-tables," which comprised the following: "Notice. The hours or times stated in these tables are appointed as those at which it is intended, so far as circumstances will admit, the passenger trains should arrive at and depart from the several stations; but their departure or arrival at the times stated, or the arrival of any trains passing over any portion of the company's lines in time for any nominally corresponding train on any other portion of their line, is not guaranteed; nor will the company under any circumstances be held responsible for delay or detention, however occasioned, or any consequences arising therefrom. The issuing of tickets to passengers to places off this company's lines is an arrangement made for the greater convenience of the public; but the company will not be held

responsible for the non-arrival of this company's own trains in time for any nominally corresponding train on the lines of other companies," &c. The train, though due at Leeds, according to the company's time-tables, at 4.45 p.m., did not arrive there till 5.22, whereby the plaintiff missed the 5.10 Midland train to Barrow and was unable to proceed on his way to Belfast that night. In an action brought by him to recover the amount of his hotel expenses at Leeds: *Held*, that, the defendants not having contracted to use reasonable efforts to ensure punctuality, it was not incumbent upon them to give a satisfactory explanation of the delay, and that upon the above facts they were entitled to a verdict and judgment.—*M'Cartan* v. *North-Eastern Railway Co.*, 54 L.J. Q.B. 441.

And see Carrier.

Rate.—*See* Water Rate.

Scotch Law:—

(i.) **H. L.**—*Road—Prescriptive Public Right of Way.*—According to the law of Scotland, if the public have used a road, as a matter of right, continuously and without interruption, for forty years, they have a prescriptive right to use it. But the user must have been of the whole road, as a means of passage from the one terminus to the other, and not such an user as could reasonably be ascribed, either to private servitude rights, or to the licence of the proprietor. The amount of user must, moreover, have been such as might have been reasonably expected, if the road in dispute had been an undoubted highway. Public user is a fact to be inferred from overt acts of possession; and defective evidence of user cannot be strengthened by proof of individuals having been induced by certain motives to abstain from such acts. If less than forty years possession by the public be proved, there is no principle or authority for saying that a dedication is to be presumed. When the public are excluded for forty years, their right, however clear it may be that they once had one, is gone by negative prescription.—*Mann* v. *Brodie*, L.R. 10 App. Cas. 378.

And see Will, p. 27, vii.

Set-off.—*See* Administration, p. 1, i.

Settlement:—

(ii.) **H. L.**—*Construction—"Payable."*—The presumption is strong that in a marriage settlement the shares of children are intended to become vested, in the case of sons, at twenty-one, and of daughters, at twenty-one or marriage.—By a marriage settlement lands were conveyed to trustees upon trust for the husband and wife successively for life, and after the death of the survivor to raise £3,000, to be divided among the children of the marriage in equal shares as tenants in common, "the share of such child or children as shall be a son or sons to be paid to him or them upon his or their respectively arriving at the full age of twenty-one years, and the share or shares of such of them as shall be daughters to be paid upon their respectively arriving at their full age of twenty-one years or day or days of marriage, whichever shall first happen," with interest by way of maintenance at the rate of £6 by the hundred, to be computed from the day of the death of the survivor of the husband and wife, "with benefit of survivorship to the survivor or survivors of such children, if any of such children shall die, before his, her or their share or shares shall become payable, unmarried and without leaving issue as aforesaid." A son of the marriage attained twenty-one and died unmarried in the lifetime of his father. *Held*, that he had taken a vested interest in a portion of the £3,000 upon attaining the age of twenty-one.—*Wakefield* v. *Maffet*, L.R. 10 App. Cas. 422; 53 L.T. 169.

(i.) **Ch. D.**—*Construction—Limitation determinable upon Forfeiture.*—Real estate was settled upon trust for L. for life or until, *i.a.*, some event should occur whereby, if settled absolutely upon him, it would be forfeited to some other person: *Held*, that forfeited meant liable to forfeiture.—*Re Levy's trusts*, 53 L.T. 200; 33 W.R. 895.

(ii.) **Ch. D.**—*Construction—Forfeiture on Bankruptcy &c.*—Under a marriage settlement the husband was entitled, subject to a life interest in the wife, to the income of certain property for life; provided that if the husband should, *i.a.*, present a petition, or "do any other definite legal act for the liquidation of his affairs," the trust declared of the income in his favour should cease. The husband filed a liquidation petition during the life of the wife; and a trustee of his property was appointed. The husband obtained his discharge before the death of the wife. After the wife's death the trustee assigned to the debtor, for value, all the property belonging to him at the commencement of the liquidation and devolving on him subsequently to his discharge. The liquidation was not formally closed; but the trustee never made any claim to the income of the settled property. *Held*, that there had been a forfeiture of the husband's life interest.—*Robertson* v. *Richardson*, 33 W.R. 897.

(iii.) **Ch. D.**—*Residence Clause—Settled Land Act*, 1882, *ss.* 51, 58 (1) (*vi.*).—An estate was devised to the use of A. so long as he should reside upon it for not less than three calendar months in each year after he should have become entitled to actual possession, with ulterior limitations: *Held*, that he could sell the estate under the above Act, and that his interest continued in the proceeds of sale. *Re Paget's settled estate*, 53 L.T. 90; 33 W.R. 898.

(iv.) **Ch. D.**—*Settled Land Act*, 1882, *s.* 2 (5), (6); *s.* 58 (6), (9)—"*Tenant for Life.*"—A testator devised lands to trustees upon trust, during the life of his son J. E., to apply the rents and profits in such manner as they should think fit for the benefit of J. E., his wife and children, or any one or more of them, and in the event of his bankruptcy for other purposes: *Held*, that J. E. and his wife, not being entitled to receipt of the income, had not the powers of a tenant for life under the above Act.—*Re Atkinson; Atkinson* v. *Bruce*, 53 L.T. 258; 33 W.R. 899.

(v.) **Ch. D.**—*Settled Land Act*, 1882, *ss.* 3, 4, 31, 50-57—*Power of Tenant for Life—Suit Pending.*—A tenant for life under the above Act may sell, without the sanction of the Court, while an administration suit, instituted before the Act, is pending.—*Lady Cardigan* v. *Curzon-Howe*, 33 W.R. 836.

(vi.) **Ch. D.**—*Tenant for Life and Remainderman—Settled Land Act*, 1882, *ss.* 21 (11), 22 (5), 37, 53—*Proceeds of Sale of Heirlooms—Discharge of Incumbrances.*—Under the S. L. A., 1882, tenant for life is entitled to have the proceeds of sale of heirlooms, settled in trust to devolve with the land until a tenant in tail by purchase attains 21, applied in discharge of incumbrances affecting the inheritance.—*Re Duke of Marlborough's settled estates; Duke of Marlborough* v. *Marjoribanks*, 54 L.J. Ch. 833; 53 L.T. 216; 33 W.R. 871.

(vii.) **Ch. D.**—*Sale of Chattels Devolving with Title not Annexed to Land—Settled Land Act*, 1882, *s.* 2, *sub-ss.* 5, 10; *ss.* 37, 58.—A dignity which descends to the heirs of the body is land within the meaning of the Settled Land Act, 1882, although it be not annexed to any place; and the owner can sell chattels bequeathed to be devolved with it.—*Re Carnac's Will and the Settled Land Act*, 1882 (*Re Rivett-Carnac*), 53 L.T. 82; 33 W.R. 837.

(i.) **Ch. D.**—*Settled Land Act, 1882, s. 25—"Improvements."*—Capital trust moneys arising from the sale of one settled estate and of heirlooms may be invested, under sec. 25 of the above Act, in effecting necessary improvements upon the principal mansion-house, and the outbuildings connected with it, of another estate settled upon the same trusts; and (1) laying down new pipes, and erecting a cistern and a steam engine, to supply water to the mansion-house; (2) making a new system of drains for the mansion-house; (3) pulling down dilapidated stables and coach-houses to the mansion-house and erecting new ones; and (4) building a new wing to the house occupied as a residence by the agent to the estate, may be improvements within the scope of the section.—*Re Houghton (Marquis of Cholmondeley's) settled estate*, 53 L.T. 196; 33 W.R. 869.

(ii.) **C. A.**—*Devise of Leaseholds with Customary Right of Renewal, for Life with Remainder over—Purchase, by Tenant for Life, of Reversion.*—The doctrine that the tenant for life of a lease can renew it only for the benefit of the estate applies to a case where the tenant for life has purchased the reversion.—*Phillips* v. *Phillips*, L.R. 29 Ch. D. 673.

(iii.) **C. A.**—*Fraudulent Conveyance—27 Eliz., c. 4—Lease—Assignment—Renewal.*—Decision of Ch. D. (*see* Vol. **10**, p. 19, iii.) affirmed.—*Re Lulham; Brinton* v. *Lulham*, 53 L.T. 9.

And see Husband and Wife, p. 10, i., iv. Poor Law, p. 14, vi., vii.

Ship:—

(iv.) **C. A.**—*Bill of Lading—Jettison—Deck Cargo.*—Decision at N. P. (*see* Vol. **10**, p. 78, iii.) reversed, the Court of Appeal holding that it was incumbent upon the defendants to prove a general practice to stow goods on deck.—*Newall* v. *Royal Exchange Shipping Co.*, 33 W.R. 868.

(v.) **C. A.**—*Charter-party—"Ready Quay Berth as Ordered by the Charterer"—Demurrage.*—By a charter-party the *W.* was to proceed to L. or T, "to such ready quay berth as ordered by the charterer:" *Held*, that the charterer was bound to name a quay berth which was ready.—Demurrage is the agreed amount of damage which is to be paid for the delay of the ship caused by the default of the charterer at either the commencement or the end of the voyage.—*Harris* v. *Jacobs*, L.R. 15 Q.B.D. 247; 54 L.J. Q.B. 492.

(vi.) **N. P.**—*Charter-party—Freight Payable in Advance—Loss of Cargo—Damages.*—A stipulation in a charter-party that four-fifths of the freight shall be paid in advance, "vessel lost or not lost," does not prevent the charterer from recovering that amount as damages from the shipowner upon the loss of the vessel through negligence.—*Great Indian Peninsular Ry. Co.* v. *Turnbull*, 33 W.R. 874.

(vii.) **C. A.**—*Collision—Regulations for Preventing Collisions at Sea, Art.* 18.—Not reversing, when there is an evident risk of collision is an infraction of the above article.—*The Stanmore*, L.R. 10 P.D. 134; 53 L.T. 10.

(viii.) **P. D.**—*Collision—Flare-up Lights—Regulations for Preventing Collisions at Sea, Art.* 2.—Whether or not a vessel is to blame for showing a flare-up light depends upon whether or not the showing of such light was calculated to mislead.—*The Merchant Prince*, 54 L J. P.D. & A. 79.

(ix.) **P. D.**—*Collision—Trawlers—Regulations for Preventing Collision at Sea, 1884, Art.* 10.—Under the regulations of 1884, a trawler, when moving through the water with her trawl down, is bound to carry the side-lights that an ordinary sailing vessel carries. If, when so moving, she carries a white light, she infringes the regulations. But if her carrying a white light cannot possibly have contributed to the collision, she will not be held to blame on that account.—*The Chusan*, 53 L.T. 70.

(i.) **P. D.**—*Collision—Tug and Tow—Satisfaction of Claim.*—A collision having taken place between a schooner and a tug and her tow, for which the tug was alone to blame, the owners of the schooner and the owners of the tow entered into an agreement which gave to the owners of the tow the control of the proceedings in an action brought by the schooner against the tug for the purpose of establishing that the tug was to blame for the collision, the owners of the tow paying to the owners of the schooner £650 "as an advance on account of the damages to be recovered from the owner of the" tug, and it being "understood, as a basis of the arrangement, that the" schooner would prove that she had her lights burning and kept her course: *Held*, no bar to the schooner recovering in the action.—*The Stormcock*, 53 L.T. 53.

(ii.) **P. D.**—*Collision—Consequential Damage.*—Shipowners may not include in their claim for damages in respect of repairs rendered necessary by a collision the cost of repairs which have become necessary through their being discovered in the course of the repairs rendered necessary by the collision, but which, but for the collision having rendered repairs necessary, would not have been discovered at all.—*The Princess*, 52 L.T. 932.

(iii.) **P. D.**—*Limitation of Liability.*—All claims in respect of loss of life having been settled, proceedings stayed, upon the owners bringing into court £8 per ton in respect of damage to ship or goods.—*The Foscolino*, 52 L.T. 866.

(iv.) **P. D.**—*Wages—Lien—Merchant Shipping Act*, 1854, *s.* 187—*Merchant Seamen Act*, 1880, *s.* 4.—If the master of a vessel elects to leave his wages at interest in the hands of the managing owners, he loses his right to recover them *in rem.*—An owner is not liable under 17 & 18 Vict., c. 18, s. 187, to pay a penalty for refusing to pay wages, if there is a *bonâ fide* question as to his liability.—*The Rainbow*, 53 L.T. 91.

(v.) **P. D.**—*Arrest—Commission Paid for Bail—Discontinuance of Action—Damages.*—When a ship has been arrested and held to bail, and the proceedings against her have been discontinued before the hearing, the owners are not entitled to compensation for the loss occasioned to them by being obliged to pay commission in order to procure the bail, unless they show that the arrest was malicious or the result of gross negligence. —*The Numida; The Collingrove*, 54 L.J. P.D. & A. 78.

And see General Average. Injunction, p. 11, ii. Practice, p. 16, i.

Solicitor:—

(vi.) **C. A.**—*Costs—Mortgage to secure Balance of Purchase-money—Investigation of Mortgagor's Title—Solicitors' Remuneration Act*, 1881, *G. O.*, 1882—*Taxation after Payment—Solicitors Act*, 1843, *s.* 41.—Upon a sale by a mortgagee, where part of the purchase-money is allowed to remain on mortgage, the vendor's solicitor is not entitled to charge the scale fee according to Sched. I., Part I., of the above order, for investigating the mortgagor's title; but where the scale fee has been so charged, and paid, under a mistake of law, the Court will not afterwards order taxation.—*Re Glascodine and Carlyle*, 52 L.T. 781.

(vii.) **C. A.**—*Solicitors' Remuneration Act*, 1881; *G. O.*, *r.* 4; *Sched. I., Part I.*, *r.* 11—*Sale by Auction.*—The Solicitors' Remuneration Act and the rules made under it were not intended to give to the solicitor remuneration according to the scale, where he does not do the whole of the work for which the remuneration is provided, but somebody else does and is paid by the client for part of that work.—*Re Wilson (a lunatic)*, L.R. 29 Ch. D. 790.

(i.) **Ch. D.**—*Verbal Agreement as to Past Costs—Attorneys' and Solicitors' Act, 1870, s. 4.*—An agreement between solicitor and client that the solicitor shall take a lump sum for past costs must be in writing.—*Re Russell, Son and Scott*, 52 L.T. 794; 33 W.R. 815.

(ii.) **Ch. D.**—*Costs—Charging Order—Property recovered or preserved.—23 & 24 Vict., c. 127, s. 28.*—At the trial of an action for dissolution of partnership the parties agreed to a compromise, and an order was made directing taxation of the costs of all parties and staying all proceedings, except for the purpose of enforcing the agreement and the order. The agreement provided, among other things, for the sale of the partnership property, and that all the costs of the parties should be paid out of the estate. *Held*, that the defendant's solicitor could not have an order charging his costs upon the plaintiff's share in the partnership property.—*Rowlands* v. *Williams*, 53 L.T. 135.

And see Bankruptcy, p. 3, vi. Practice, p. 15, vi.

Statute of Frauds.—*See* Company, p. 5, v. Contract.

Stop Order.—*See* Mortgage, p. 13, vi.

Tithes:—

(iii.) **Ch. D.**—*Lapse of Time—Presumption of Release.*—Action by a lay impropriator, claiming under a grant from the Crown made in 1610, to recover tithes imposed by 37 Hen. VIII., c. 12. It could not be shown that tithes had ever been paid in respect of the premises. *Held*, that there had not been such a lapse of time that the Court would presume a release.—*Esdaile* v. *Payne* (*No.* 2), 53 L.T. 21.

Tort.—*See* Negligence.

Trade Mark:—

(iv.) **Ch. D.**—*Mark calculated to Deceive.*—The plaintiffs having registered, in 1876, a picture of a hunting field with the words "The Sportsman's Special Quality," as their trade mark for cherry brandy, the name of "Huntsman's" was largely applied to their cherry brandy by the public. The defendants, well knowing this, registered, in 1884, a trade mark for their cherry brandy consisting also of a picture of a hunting field, with the words "Huntsman's Cherry Brandy." The defendants' picture was very unlike the plaintiffs' picture. *Held*, that the defendants' trade mark was a colourable imitation of that registered by the plaintiffs, and that the register must be rectified by its being expunged.—*Re Barker's trade mark*, 53 L.T. 23.

(v.) **C. A.**—*Joint Adventure—Joint Mark.*—Of two parties using a design representing both their interests in a common adventure, neither is, in the absence of agreement, entitled, at the termination of the adventure, to register or use the design.—*Re Jones's trade mark*, 53 L.T. 1.

(vi.) **C. A.**—*Rectification of Register—Trade Marks Registration Act, 1875, s. 5.*—Under an arrangement between R. & Co., exporters of spirits at Cognac and London, and M. & Co., spirit merchants at Madras, M. & Co. were entitled to the exclusive use in Madras of a trade mark for brandy, consisting of a Maltese cross and the name of M. & Co. For some years the mark was largely used by M. & Co. in Madras. R. & Co. had used the Maltese cross as a trade mark for brandy in England before 1875; in 1879 they registered it in their own name as a trade mark for brandy in England. *Held*, that M. & Co. were not entitled to have the register rectified by the removal of R. & Co.'s name.—*Re Rivière's trade mark*, 53 L.T. 237.

Trades Union :—

(i.) **Q. B. D.**—*Trades Union Act*, 1871—*Fraudulent Misapplication by Officer of Society of Money of Society in his Possession.*—Imprisonment suffered under 34 & 35 Vict., c. 31, s. 12, for misapplying money, extinguishes the civil remedy for the debt.—*Knight* v. *Whitmore*, 53 L.T. 233; 33 W.R. 907.

Trust :—

(ii.) **C. A.**—*Imperfect Gift—Declaration of Trust.*—A testator wrote and signed the following memorandum: "I wish to communicate to my executors that I have to-day given to F. P. my £1,000 debenture bond of the M. S. & L. railway company; but as I shall require the annual dividends to meet my necessary expenses, I retain the document in my own possession for my lifetime, requesting you on my death to hand it over to F. P. and communicate to the secretary of the said railway company at the M. office, relative to the transfer of the said bond being entered on their books. . . . This 9th day of February, 1882. . . . P.S.—You will find this bond in my deed-box, attached to this memorandum." What the testator called a debenture bond was in reality a certificate for £1,000 debenture stock. *Held*, an imperfect gift, and not a declaration of trust.—*Re Shield; Pethybridge* v. *Burrow*, 53 L.T. 5.

Trustee :—

(iii.) **Ch. D.**—"*Person of Unsound Mind*"—*Appointment of New Trustees—Trustee Act*, 1850, *ss.* 2, 3, 32.—A person who from advanced age and failing memory is incapable of transacting business is a person of unsound mind within the above second section; and upon the appointment of a new trustee to act in the place of such person, the Chancery Division has no jurisdiction to make a vesting order.—*Re Phelps' settlement trusts*, 53 L.T. 27.

(iv.) **Ch. D.**—*Appointment of New Trustees—Conveyancing Act*, 1881, *s.* 31—"*Personal Representatives of Last Surviving or Continuing Trustee.*"—The executor of a sole trustee has power to appoint new trustees under the above section.—*Re Shafto's trusts*, 54 L.J. Ch. 885; 53 L.T. 261.

And see Administration, p. 1, iv. Priority.

Vendor and Purchaser :—

(v.) **C. A.**—*Defect in Title—Notice.*—A. agreed to sell to B. his interest under a building agreement with a railway company. The latter agreement did not impose upon A. any restriction as to trades in the houses to be built. The property had, however, before it was acquired by the company, been made subject to covenants not to carry on certain trades in the houses. A., when contracting with B., did not know of these covenants. B. knew of them, but was under an erroneous impression that the purchase by the railway company under their compulsory powers had put an end to them. The contract between A. and B. was upon the footing that a good title was to be made. B. having refused to proceed with the bargain: *Held*, that he was justified in doing so.—*Ellis* v. *Rogers*, L.R. 29 Ch. D. 661.

(vi.) **Q. B. D.**—*Conditions of Sale—General Condition as to Easements &c.—Conveyancing Act*, 1881, *s.* 3, *sub-s.* 3.—Property was contracted to be sold "subject to all tenancies, tenant rights, chief and other rents, tithe, rights of way, water, light and other easements, and also to an arrangement" with a waterworks company, to payment of a rateable proportion of the expense of keeping a private road, and "to any matter or thing affecting the same, whether disclosed at the time of sale or not." One

of the conditions of sale provided that any error or omission in the particulars or special conditions should not annul the sale, nor entitle either party to compensation. The contract was silent as to restrictive covenants; but in the course of the negotiations the vendor mentioned that there were restrictive covenants which would prevent the property being used as a brickfield. The purchaser subsequently discovered that there were other restrictions upon the use of the property. These were were not contained in the conveyance to the vendor, nor was the latter aware of them. *Held*, that the purchaser was entitled to recover his deposit. —*Nottingham Patent Brick and Tile Co.* v. *Butler*, L.R. 15 Q.B.D. 261.

(i.) **Ch. D.**—*Error in Quantity—Rescission—Damages.*—Three lots of building land were sold at auction as one lot, "subject to readmeasurement." The conditions provided that any error should not annul the sale, but should be a subject for compensation. The plaintiffs purchased, intending to build ten houses on the land; and they caused plans and specifications to be prepared accordingly. After conveyance, they discovered that 113 square yards, with a frontage of 15 feet, of one of the lots, which had been sold to them as containing 218 square yards, with a frontage of 39 feet 3 inches, belonged to another person. *Held*, that they were not entitled to rescind the contract; but that they were entitled, besides compensation, to their expenses incurred in the preparation of the plans and specifications.—*Flewitt* v. *Walker*, 53 L.T. 287; 33 W.R. 894.

And see Company, p. 6, i. Solicitor, p. 22, vi.

Wager :—

(ii.) **C. A.**—*Principal and Agent—8 & 9 Vict., c. 109, s. 18.*—A person who employs a commission agent to make wagers upon horse-races for him can recover from such agent the amount which the latter has received in respect of successful wagers made under his retainer.—*Beyer* v. *Adams* (26 L.J. Ch. 841) overruled.—*Bridger* v. *Savage*, L.R. 15 Q.B.D. 363; 54 L.J. Q.B. 464; 53 L.T. 129; 33 W.R. 891.

Water Rate :—

(iii.) **Q. B. D.**—*Right of Distress.*—The West Middlesex Waterworks Company's Act, 1852, incorporates 46 Geo. III., c. 119, by which power was given to distrain for water rates agreed upon between a waterworks company and their customers. By 50 Geo. III., c. 132, s. 13, a company was empowered to charge a reasonable instead of an agreed sum. The Waterworks Clauses Act, 1847, ss. 74, 85, enacted that rates and costs might be recovered in the same manner as damages, and also that the amount of damages for which there was no special provision should be ascertained by two magistrates, under the Railways Clauses Act, 1845, s. 140. *Held*, that the company had a right of distress under their Act of 1852.—*Richards* v. *West Middlesex Waterworks Co.*, 33 W.R. 902.

Will :—

(iv.) **P. D.**—*Probate—Attestation on first only of two pages.*—A will was written on two pages of a printed form. It was signed and attested at the foot of the first page only. There were no words on the first page to connect it with the second; but a certain disposition was written partly on the first and partly on the second page. *Held*, upon motion for probate, that probate must be granted of the first page only.—*In the goods of Males*, 33 W.R. 825.

(i.) **C. A.**—*Construction—Gift to Person appointed Executor.*—The presumption is that a legacy to a person appointed executor is given to him in that character; and that presumption is not rebutted by the fact that the bequest of the legacy precedes in the will the appointment of the legatee as executor; nor is a difference in either the nature or the amount of the legacies given to the persons named as executors of itself sufficient to show that the gift is not attached to the office.—*Re Appleton; Barber* v. *Tebbit*, L.R. 29 Ch. D. 893; 52 L.T. 906.

(ii.) **C. A.**—*Construction—Gift to Next-of-Kin—Exclusion of Persons Named.*—Decision of Ch. D. (*see* Vol. **10**, p. 84, x.) reversed.—*Re Taylor; Taylor* v. *Ley*, 52 L.T. 839.

(iii.) **Ch. D.**—*Construction—"Child."*—Bequest to "all and every my child and children" equally, with a gift over to the "lawful issue" of the testator's brothers and sisters, following a bequest in trust for the testator's "dear wife" J. A. B. for life. The testator and J. A. B. were not married, and at the time of the testator's death no child had been born to him. *Held*, that the illegitimate child of the testator by J. A. B., *en ventre sa mère* at the date of the death (but not at the date of the will), took nothing under the will.—*Re Bolton; Brown* v. *Bolton*, 53 L.T. 25.

(iv.) **C. A.**—*Construction—"Surviving."*—A testator devised specified estates to his seven children respectively for their respective lives, with limitations over to their respective children; and in case any of his children should die without leaving children, him, her or them surviving, he devised the several estates to which their children respectively would have been entitled under his will, if living, to his surviving children for their respective lives, with remainder to their respective children. There was no gift over on the death of all the children without leaving issue, nor did the will contain any residuary devise. *Held*, that "surviving" meant surviving personally, and not by issue interested under the will.—*Re Benn; Benn* v. *Benn*, L.R. 29 Ch. D. 839; 53 L.T. 240; 34 W.R. 6.

(v.) **Ch. D.**—*Construction—"First and Second Cousins"—Gift Over on Death before "Payment."*—A testator bequeathed by his will the residue of his property to his "first and second cousins," including A. B. and the children of A. B. By a codicil he gave to his "cousin" J. B. £100, in addition to any sum to which he might be entitled under the will. A. B. was the testator's first cousin, J. B. his first cousin once removed. He had no second cousins at the date of the will or at his death, but had first cousins, first cousins once removed and first cousins twice removed. *Held*, that first cousins and first cousins once removed took.—The codicil directed that if any of the first or second cousins should die before payment of the share directed to be paid to him, such share should go over: *Held*, that "payment" meant "time for payment."—*Wilks* v. *Bannister*, 53 L.T. 247; 33 W.R. 922.

(vi.) **Ch. D.**—*Construction—Ambiguous Limitations.*—Limitations in a will of a freehold property at L. to A. for life, remainder to B. for life, if she should be living at the time of the decease of A., but if she should then be dead, to C. and D. absolutely; residuary devise to B. absolutely. A. survived the testatrix, B. survived A., and C. and D. survived B. *Held*, that C. and D. were entitled to the freehold property at L., subject to the life estates of A. and B.—*Re Martin; Smith* v. *Martin*, 53 L.T. 34.

(vii.) **Ch. D.**—*Construction—"Furniture, Goods and Chattels"—"All my Interest in the C. Estate"—Ademption.*—*Held*, that "the furniture, goods and chattels" in a certain house included only such chattels in

the house as would pass to a tenant upon the letting of a furnished house; and that a bequest of "all my interest in the C. estate" was adeemed, the testator having parted with the C. estate, received the purchase-money and dealt with it as money.—*Manton* v. *Tabois*, 53 L.T. 289; 33 W.R. 832.

(i.) **Ch. D.**—*Construction—"Securities for Money."*—Gift by will of "moneys due on mortgage, securities for money, and ready money": *Held*, to pass consols, promissory notes and railway debenture stocks; but, the Apportionment Act, 1870, applying, not the proportion of dividends on the consols to the date of the testator's death.—*Re Beavan; Beavan* v. *Beavan*, 53 L.T. 245.

(ii.) **Ch. D.**—*Construction—"Stock standing in my Name"—"Other Effects."*—Bequest of "all the stock standing in my name in various companies, together with all bonds &c.," *Held*, to pass New Zealand 4 *per cent.* stock, Metropolitan Board of Works stock, Nottingham Corporation stock and various other stocks; and residuary gift of "all my household furniture, wines, carriages, horses and other effects, except my jewellery," *Held*, to pass £750 in cash and a book debt of £220.—*Re Parrott; Parrott* v. *Parrott*, 53 L.T. 12.

(iii.) **Ch. D.**—*Construction—Special power of Appointment—General Words—"Beneficial disposing Power."*—Power to appoint personal estate in favour of children, grandchildren or other issue: *Held*, the testator having no other power of appointment, to be exercised by a bequest, for the benefit of children, of all the personal estate over which at the time of his decease he should have any "beneficial disposing power" by his will.—*Von Brockdorff* v. *Malcolm*, 53 L.T. 264; 33 W.R. 934.

(iv.) **C. A.**—*Construction—Devise of Property in its present state—Subsequent Contract to Sell.*—Decision of Ch. D. (*see* Vol. **10**, p. 56, v.) reversed.—*Re Portal and Lamb*, 33 W.R. 859.

(v.) **Ch. D.**—*Construction—Gift of Income—Ultimate Gift at 21.*—A will contained a gift to a trustee upon trust to apply the income for the maintenance and education of A. and B., until they should attain 21, and then to divide the corpus between them. A. died under age. *Held*, that his moiety lapsed.—*Re Morris; Salter* v. *A.-G.*, 52 L.T. 840; 33 W.R. 895.

(vi.) **Ch. D.**—*Construction—Direction to accumulate Rents until Amount of Accumulation sufficient to pay off Mortgages.*—A testator devised his estates to trustees and directed them to let the rents accumulate until the amount of the accumulations should be sufficient to discharge the mortgages, and then to discharge the mortgages; the tenant for life not to be entitled to any portion of the rents, until the mortgages had been discharged. There were two mortgages. The trustees accumulated the rents and paid off one of them. The mortgagees sold the portion of the estates subject to the other for less than their debt, and the residue was paid to them out of the accumulations. *Held*, that the tenant for life was entitled to possession of the rents and to the surplus of the accumulations.—*Norton* v. *Johnston*, 34 W.R. 13.

(vii.) **C. A.**—*Construction—Effect of Terms of Foreign Law being employed.*—The mere employment of Scotch technical terms in a testamentary document disposing of personal estate, the testator being a person whose domicil of origin had been Scotch, but who had acquired an English domicil of choice, is not such an indication of an intention

that the dispositions shall be construed according to Scotch law that the Court will act upon it. Decision of Ch. D. (*see* Vol. 10, p. 18, iv.) reversed upon the facts.—*Bradford* v. *Young*, L.R. 29 Ch. D. 617; 33 W.R. 860.

(i.) **Ch. D.**—*Charity—Statute of Mortmain, s.* 1.—A testatrix bequeathed to trustees certain objects of art and curiosity, to form a public museum in Bath, and money for the perpetual protection, maintenance and endowment of the collection: *Held*, that the bequest was not void under 9 Geo. II., c. 36, as involving the purchase of land.—*Re Holburne; Coates* v. *Mackillop*, 53 L.T. 212.

And see **Advowson. Power. Settlement, p. 20, iii., iv.**

Windfalls:—

(ii.) **C. A.**—*Larch Trees—Tenant for Life.*—Larch trees blown down by the wind still belong to the realty, unless they are severed.—Decision of Ch. D. (*see* Vol. 10, p. 58, i.), reversed.—*Re Ainslie; Swinburne* v. *Ainslie*, 33 W.R. 910.

Quarterly Digest

OF

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Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

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By OLIVER SMITH, M.A., of the Inner Temple, Barrister-at-Law.

Act of Parliament:—

(i.) **C. A.**—*Private Act—Construction—Poor-rate—Occupation subject to Statutory Restrictions.*—In a private act provisions which the persons who obtained it allege to be in their favour must be construed strictly against them; but in other respects there is no difference between the construction of a private act and that of a public act.—The respondents were limited, under a private act, in respect of a portion of their line, to a rent of £2,500 a year from the London and North Western Railway Company for running powers. The value of the actual traffic of the London and North Western Railway Company over that part of the line greatly exceeded that amount. *Held*, that the respondents were rateable to the poor upon £2,500 only.—*Altrincham Union Assessment Committee* v. *Cheshire Lines Committee*, L.R. 15 Q.B.D. 597.

(ii.) **H. L.**—*Private Act—Construction.*—The obligation to remove the *débris* of the old Tay bridge, imposed upon the North British Railway Company by their special act of 1881, is absolute.—*North British Railway Co.* v. *Provost of Perth*, L.R. 10. App. Cas. 579.

Administration:—

(iii.) **P. D.**—*Administration Bond—Amount.*—The circumstance that the estate is large, and the risk small, is not a sufficient reason for the Court to dispense with sureties for due administration by an administrator, or to reduce the amount of security ordinarily required (viz., double the amount of the estate).—*In the goods of Earle*, L.R. 10 P.D. 196; 54 L.J. P.D. & A. 95; 34 W.R. 48. *In the goods of M'Gowan*, L.R. 10 P.D. 197; 34 W.R. 48.

And see County Court. Executor. Probate. Will, p. 68, v, vi.; p. 69, i.

Adulteration :—

(i.) **Q. B. D.**—*Food and Drugs Act*, 1875, *s.* 6.—*Offering* an adulterated article *for sale* as a genuine one is not an offence within the above section. —*Kirk* v. *Coates*, L.R. 16 Q.B.D. 49.

Ambassador :—

(ii.) **Q. B. D.**—*Privilege—Attaché—7 Anne, c.* 12.—A foreign consul-general who is also *attaché* to the legation of the country which he represents is entitled to the immunities accorded to the suite of an ambassador.—*Parkinson* v. *Potter*, 34 W.R. 215.

Apportionment.—*See* Settlement, p. 60, ii.

Arbitration.—*See* Injunction, p. 43, i.

Attaché. —*See* Ambassador.

Auctioneer :—

(iii.) **C. A.**—*Lien—Marshalling.*—An auctioneer has a particular, although not a general, lien. An auctioneer who, having in his hands proceeds of sale upon which he has a lien, and also the proceeds of a sale on behalf of the same principal upon which he has no lien, receives notice of a charge by the principal upon the former fund, is not bound to marshal the two funds in favour of the creditor having the charge.—*Webb* v. *Smith*, L.R. 30 Ch. D. 192; 53 L.T. 737.
And see Bill of Sale, p. 32, v.

Bankruptcy :—

(iv.) **C. A.**—*Petition Founded on Judgment—Bankruptcy Act*, 1883, *s.* 7, *sub-s.* 3.—Although a bankruptcy petition be founded on a judgment, yet, if grounds of suspicion be given, even by the debtor, the Court, before making a receiving order, will entertain the question of the reality of the debt.—*Re Lennox ; e. p. Lennox*, 55 L.J. Q.B. 45; 34 W.R. 51.

(v.) **C. A.**—*Receiving Order—Bankruptcy Act*, 1883, *s.* 9.—A debtor against whom a receiving order has been made is entitled to the protection of the above section, although the order has not been signed. After an order for attachment has been made against him by his consent, he can still object to process being issued under it.—*Re Manning*, L.R. 30 Ch. D. 480; 34 W.R. 111.

(vi.) **Q. B. D.**—"*Question arising in a Bankruptcy*"—*Bankruptcy Act*, 1883, *s.* 102.—On the day on which the bankrupt sent out notices of suspension of payment, his manager at S., knowing that he was in difficulties, informed two of his creditors of the fact, and sold to them a quantity of wheat belonging to the debtor, in order that they might set off the price against their debt. The wheat was delivered on the following day. The debtor repudiated the transaction immediately upon its coming to his knowledge, and his trustee in bankruptcy moved to set it aside. *Held* (1) that the claim arose out of the bankruptcy ; (2) that the transaction must be set aside.—*E. p. Scott and Smith ; re Hawke*, 34 W.R. 167.

(vii.) **B.**—*Imperfect Gift of Chattels—Bankruptcy of Donor.*—In 1866, soon after the birth of his son T., R. purchased and laid down a pipe of port, and told the family and his friends that it was for T. The wine became known in the family circle as T.'s wine. Only occasionally a bottle of it was drunk, for the purpose of testing its condition. In 1885, R. became bankrupt. *Held*, that there not having been on his part an intention to make an immediate gift, the wine passed to the trustee in his bankruptcy.—*Re Ridgway ; e. p. Ridgway*, L.R. 15 Q.B.D. 447; 54 L.J. Q.B. 570; 34 W.R. 80.

(i.) **Q. B. D.**—"*Settlement of Property*"—*Bankruptcy Act*, **1883, *s*. 47.—A father, in 1880, handed to his son a sum of money, to purchase certain shares in a ship. The son purchased the shares accordingly, and for a time received the dividends upon them. Eventually he sold them, and gave the proceeds to his sister, upon a sort of implied trust for their parents. In 1883 the father was adjudicated a bankrupt. *Held*, that the payment by the father to the son was a settlement of property within the above section.—*Re Player; e. p. Harvey* (*No.* 1), 54 L.J. Q.B. 553; 53 L.T. 768.**

(ii.) **Q. B. D.**—"*Settlement of Property*"—*Bankruptcy Act*, **1883, *s*. 47.—A gift of money to a son to enable him to commence business is not a settlement of property within the above section; at any rate, if the money can no longer be traced.—*Re Player; e. p. Harvey* (*No.* 2), L.R. 15 Q.B.D. 682; 54 L.J. Q.B. 554.**

(iii.) **Q. B. D.**—*Order and Disposition*—*Bankruptcy Act*, **1883, *s*. 44.—Shares in a joint-stock company, the certificate for which the owner, a stockbroker, has deposited, without executing a formal transfer, with his bankers, as security for his overdrawn account, before committing an act of bankruptcy upon which he is eventually adjudicated a bankrupt, do not pass to the trustee in the bankruptcy as "goods being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof."—*Re Jenkinson; e. p. Nottingham and Nottinghamshire Bank*, L.R. 15 Q B.D. 441; 54 L.J. Q.B. 601.**

(iv.) **B.**—*Order and Disposition*—*Bankruptcy Act*, **1883, *s*. 44, *sub-s*. 3—*Hops*.—There being a custom in the hop trade, that, when hops are purchased from a merchant and not immediately delivered to the customer, they remain in the warehouse of the merchant to the customer's order: *Held*, on the bankruptcy of a hop-merchant, that hops in his warehouse which had been purchased by a customer did not belong to the trustee in the bankruptcy.—*E. p. Dyer; re Taylor*, 53 L.T. 768; 34 W.R. 108.**

(v.) **B.**—*Title of Trustee*—*Money paid by Debtor to his Solicitor to oppose Petition*.—**Money *bonâ fide* paid by a debtor to his solicitor for counsel's fees and other expenses in defending him against bankruptcy proceedings cannot, although the proceedings result in an adjudication founded on an act of bankruptcy of which the solicitor had notice, be recovered from the solicitor by the trustee in the bankruptcy.—*Re Sinclair; e. p. Payne*, L.R. 15 Q.B.D. 616; 53 L.T. 767.**

(vi.) **B.**—*Proof by Wife*—*Married Women's Property Act*, **1882, *s*. 3—*Burden of Proof*.—The meaning of the above section is that a wife cannot prove in her husband's bankruptcy for money lent to him for the purpose of his trade, until all the claims of the other creditors are satisfied. The onus of proving that money which she has lent to him was not lent for the purpose of his trade lies upon her.—*E. p. District Bank of London; re Genese*, 34 W.R. 79.**

(vii.) **B.**—"*Examination*" *of Bankrupt*—*Bankruptcy Act*, **1883, *s*. 24.—The Court has no power to order a bankrupt to answer questions and submit to a medical examination, with a view to an insurance upon his life being effected, in order that his life interest in property may be more advantageously sold.—*Re Garnett; e. p. the Official Receiver*, 55 L.J. Q.B. 77; 53 L.T. 769; (*sub. nom. e. p. Bullock; re Garnett*) 34 W.R. 79.**

(viii.) **C. A.**—*Payment to Trustee under Mistake of Law*.—**The Court will order a trustee in bankruptcy who has distributed in dividends money paid to him under a mistake of law to repay the amount out of sums subsequently coming to his hands.—*Re Rivett-Carnac; e. p. Simmonds*, 55 L.J. Q.B. 74.**

(i.) **C. A.**—*Composition—Duty of Secured Creditor to Assent to Debtor's Valuation of Security—Bankruptcy Act*, 1869, *s.* 126.—A compounding debtor, in his statement of affairs, valued a security which he had given for a debt at nothing. *Held*, that the creditor was not bound to express his assent to such valuation, as a condition precedent to his right to sue for the original debt, if the debtor did not tender to him the full amount of the composition.—*Hawes* v. *Bauman*, 34 W.R. 116.

(ii.) **C. A.**—*Composition—Creditor Secured by Bills of Exchange and Deposit of Goods—Composition Paid to Indorsees of Bills.*—Decision of Q.B.D. (*see* Vol. 10, p. 89, iii.) affirmed.—*Baines* v. *Wright*, 34 W.R. 211.
And see Bill of Exchange, p. 32, iv. Company, p. 34, v. Practice, p. 52, x.

Bill of Exchange:—

(iii.) **Ch. D.**—*Foreign Indorsement of English Bill—Costs of Liquidator.*—The acceptor, in England, of a bill of exchange drawn in France, by a domiciled Frenchman, in the French language, but in all other respects an English bill, cannot be heard to deny his liability upon the bill by reason of the indorsement by the drawer being invalid according to the law of France.—A liquidator resisting a claim will not be made personally responsible for costs, unless he has been guilty of a dereliction of duty.—*Re Marseilles Extension Railway and Land Company; Smallpage's and Brandon's Cases*, L.R. 30 Ch. D. 598.

(iv.) **N. P.**—*Bills of Exchange Act*, 1882, *s.* 57.—The drawers of bills of exchange, drawn in Tobago, and accepted and dishonoured, on presentation for payment, in England: *Held*, entitled to prove in the bankruptcy of the acceptor in respect of their liability for re-exchange.—*Re Gillespie; e. p. Robarts*, 53 L.T. 770.

Bill of Lading.—*See* Sale of Goods, p. 58, iii.

Bill of Sale:—

(v.) **Q. B. D.**—*Registration—Licence to Auctioneer to Seize and Sell—Bills of Sale Act*, 1878, *Amendment Act*, 1882.—A written authority to an auctioneer to seize and sell goods as security for a debt is a bill of sale within the above Act.—*E. p. Clarke; re Townsend*, 53 L.T. 771; 34 W.R. 183.

(vi.) **Q. B. D.**—*Registration—Receipt for Purchase-money of Goods—Bills of Sale Act*, 1878.—A document, to be a bill of sale to which the Act applies, must be one on which the title of a transferee of goods depends.—*Preece* v. *Gilling; Hepworth claimant*, 53 L.T. 763.

(vii.) **Q. B. D.**—*Sufficiency of Description of Grantor*—41 *Vict.*, *c.* 31, *s.* 10.—The description, in a bill of sale, of the grantor as "William Franklin, of 57, Hargrave Road, Upper Holloway, in the county of Middlesex, grocer:" *Held*, sufficient, although the grantor, besides being a grocer, was a greengrocer too.—*Throssell* v. *Marsh*, 53 L.T. 321.

(viii.) **Q. B. D.**—*Bills of Sale Act*, 1878, *Amendment Act*, 1882, *s.* 9—*Form in Schedule.*—A bill of sale is not void because it contains a covenant to insure making the insurance premiums, if paid by the grantee, repayable on demand.—*E. p. Stanford; re Barber*, 34 W.R. 168.

(ix.) **Q. B. D.**—*Covenant to Replace Worn out Goods—Power to Discharge Incumbrances out of Proceeds of Sale and to Charge for Warehousing—Bills of Sale Act*, 1878, *Amendment Act*, 1882.—A covenant by the grantor of a bill of sale to replace the goods subject to the bill is not, under section 5 of the above Act, void, except as against the grantor, as being a mortgage of after-acquired property. Nor is a power given to the grantee to discharge incumbrances out of the proceeds of sale

of the goods, or to charge for warehousing the goods, repugnant to the Act, since such a power is "for the maintenance or defeasance of the security."—*Consolidated Credit, &c., Corporation* v. *Gosney*, L.R. 16 Q.B.D. 24; 55 L.J. Q.B. 61; 34 W.R. 106.

(i.) **Q. B. D.**—*Apparent Possession—Registration—Bills of Sale Act*, 1878, *ss.* 4, 8.—Where the purchaser of a debtor's business has taken all usual and proper steps to make the change of ownership of the business known, goods, part of the stock-in-trade of the business, will not be deemed to be in the apparent possession of the debtor, merely because the purchaser has retained the debtor in his service as a salesman.—*Gibbons* v. *Hickson*, 34 W.R. 140.

Bond.—*See* Limitation of Actions.

Building Society:—

(ii.) **C. A.**—"*Deposits on Loans*"—*Borrowing Powers—Priority.*—Decision of Ch. D. (*see* Vol. **10**, p. 92, v.) affirmed.—*Re Mutual Aid Permanent Benefit Building Society*, L.R. 30 Ch. D. 434; 34 W.R. 143.

(iii.) **Ch. D.**—*Shares held on Trust—Payment, without Notice, to Registered Owner.*—By the rules of a building society shareholders were to receive for every share a certificate, which must be produced for indorsement on withdrawal; and no transfer of the scrip was to pass the interest of the shareholder, until registered in the books of the society. A notice to the effect of the latter rule was printed on each certificate. The registered owner of some shares was in reality only a trustee of them for his wife, who held the certificates. The society, without notice of the wife's interest, allowed the husband to withdraw, without producing the certificates, the amount which the shares represented. He converted the money to his own use. *Held*, that the wife was not entitled to be registered as the owner of the shares and credited in the books of the society with the sums for which credit was given in the certificates.—*Nolloth* v. *Simplified Permanent Benefit Building Society*, 34 W.R. 73.

(iv.) **Ch. D.**—*Income Tax.*—The advanced shareholders of a building society are entitled to deduct income-tax from their repayment subscriptions, before paying them to the society, unless the rules otherwise provide. But if, after they have voluntarily paid such subscriptions without deducting income-tax, the company goes into liquidation, they are not entitled to deduct the amounts so paid by them in excess from subscriptions becoming due subsequently to the liquidation.—*Re Middlesboro' &c. Building Society; e. p. Wythes*, 53 L.T. 493.

Burial Board.—*See* Ecclesiastical Law, p. 39, iv.

Burial Ground.—*See* Vendor and Purchaser, p. 65, v.

Carrier.—*See* Railway, p. 57, v.

Chain Cables and Anchors Acts.—*See* Sale of Goods, p. 58, iv.

Charity.—*See* Will, p. 68, vi.

Colonial Law:—

(v.) **P. C.—Canada.**—*Practice—Appeal in Criminal Cases*—33 *&* 34 *Vict.*, *c.* 28—*Canadian Act*, 43 *Vict.*, *c.* 25.—It is a rule of the Judicial Committee not to grant leave to appeal in criminal cases, except where some clear departure from the requirements of justice is alleged to have taken place.—The words "any other crimes" in Canadian Act, 43 Vict., c. 25, include high treason.—It was not *ultra vires* the Dominion Parliament to enact that high treason should be tried before a stipendiary

magistrate, a justice of the peace and a jury of six.—Shorthand notes taken under the authority of the magistrate are sufficient notes in writing within s. 76, sub-s. 7, of 43 Vict., c. 25.—*Riel* v. *The Queen; e. p. Riel*, L.R. 10 App. Cas. 675.

(i.) **P. C.—Lower Canada.**—*Sale of Immeuble—Duty of Vendor to give Possession.*—Upon a sale, free of charges, of buildings with fixed machinery, as an immeuble, there is no obligation upon the purchaser to pay the purchase-money, if at the time of the sale the machinery was liable to seizure by the Crown for exigible export duties.—*Prévost* v. *La Compagnie de Fives-Lille*, L.R. 10 App. Cas. 643; 54 L.J. P.C. 34.

(ii.) **P. C.—Lower Canada.**—*Mortgagor and Mortgagee—Notice—Practice—Right to Intervene—Civil Procedure Code, s. 154.*—The mortgagee's agent in a loan transaction knew that the deed conveying the property, the subject of the mortgage, to the mortgagor, though professedly a deed of sale, was in reality the transfer of an estate which had been allotted to the mortgagor as his share of residue under a will. *Held*, that the mortgagee must be treated as having notice that the property was vested in the mortgagor subject to the conditions and limitations imposed by the will.—A substitute entitled only to corpus has no right to intervene for the purpose of showing that dividends payable to the institute are not arrestable.—*Carter* v. *Molson; Holmes* v. *Carter*, L.R. 10 App. Cas. 664.

(iii.) **P. C.—Lower Canada.**—*Will—Construction—Power to Appoint, whether Non-Exclusive.*—A share of residue of personalty was left, by the will, made in 1868, and written in the English language and couched in English legal phraseology, of a testator domiciled in Lower Canada, upon trust for J. for life, with remainder to his children in such proportions as he should decide by his last will and testament, and, in default of such decision, absolutely share and share alike. *Held*, that J. had an exclusive power of appointment in favour of his children.—*M'Gibbon* v. *Abbott*, L.R. 10 App. Cas. 653; 54 L.J. P.C. 39.

Company:—

(iv.) **Ch. D.**—*Appointment of Original Directors.*—The articles of association of a joint stock company provided that the number of directors should be not less than three, and not more than ten; that two directors should form a quorum; and that the regulations of Table A in the Companies Act, 1862, Schedule 1, should apply to the articles, except so far as varied by them. *Held*, that it was not competent for two (being less than the majority) of the subscribers of the memorandum of association to appoint original directors of the company.—*Re London and South Counties Freehold Land Co.*, 34 W.R. 163.

(v.) **Ch. D.** — *Sureties — Contribution — Bankruptcy Act, 1869, s. 49—Liability of Executor.*—A director of a company who has been successfully sued by the company in respect of a loss resulting from an unauthorized loan, made by the directors, of money of the company, and who has paid his damages, is not entitled to contribution from a director who was not present at the meeting at which the loan was granted, and who is only connected with the loan through having attended a subsequent meeting at which the minutes of the former meeting were read and confirmed. But he is entitled to contribution from a director who signed a cheque by which the loan was in part effected. The liability of the latter is a liability incurred by a breach of trust, within section 49 of the Bankruptcy Act, 1869. It is, moreover, enforceable against his estate after his death.—*Ramskill* v. *Edwards*, L.R. 31 Ch. D. 100; 55 L.J. Ch. 81; 34 W.R. 96.

(i.) **C. A.**—*Transfer of Share—Administrator.*—Decision of Ch. D. (*see* Vol. **10**, p. 35, i.) affirmed.—*Clarke* v. *South Metropolitan Gas Co.*, 53 L.T. 646.

(ii.) **Ch. D.**—*Mortgage—Registration—Companies Act*, 1862, *s.* 43.—Entry, incorrect in several particulars, in the transfer book of a company, of a mortgage to A. B. and C., of whom A. and C. were directors: *Held*, under the circumstances, a sufficient registration to make the mortgage enforceable against the liquidator of the company.—*Re Underbank Mills, &c., Co.*, 34 W.R. 181.

(iii.) **Ch. D.**—*Registration of Mortgages—Companies Act*, 1862, *s.* 43.—The mortgages and charges which the above section requires to be registered are mortgages and charges created by the company itself.—*Re General Horticultural Co.; Whitehouse's claim*, 53 L.T. 699.

(iv.) **C. A.**—*Power to Increase Capital—Issue of Preference Shares—Ultra vires.*—It is not *ultra vires* a company, with power under its memorandum to increase its capital, to reserve, in its articles, power to issue preference shares, and to create new preference capital accordingly.—*Re South Durham Brewery Co.*, 34 W.R. 126.

(v.) **C. A.**—*Reduction of Capital—Companies Act*, 1867, *s.* 9.—Where a company wishes to reduce its capital, and the memorandum and articles of association contain no power for the purpose, a special resolution altering the regulations of the company, so as to give it the necessary power, must be passed before the holding of the first of the two meetings for passing the special resolution for the actual reduction of the capital.—*Re Patent Invert Sugar Co.*, 53 L.T. 737 (Ch. D.: *ib.* 698).

(vi.) **Ch. D.**—*Reduction of Capital—Advertisement of Petition—Companies Act*, 1877, *ss.* 3, 4—*G. O. March*, 1868, *rr.* 5, 16.—It is not necessary, before advertising a petition for confirmation of a resolution for a reduction of capital which will not affect the rights of creditors, to wait until the chief clerk has settled a list of creditors.—*Re London and County Plate Glass Insurance Co.*, 53 L.T. 486. *Re People's Café Co.*, 34 W.R. 229.

(vii.) **Ch. D.**—*Reduction of Capital—Companies Act*, 1867, *s.* 10—*G. O., March*, 1868, *s.* 16—*Companies Act*, 1877, *s.* 4.—Case in which the Court dispersed with the preliminary advertisement of a petition to confirm a resolution for reduction of capital.—*Re British Land and Mortgage Co. of America*, 53 L.T. 753.

(viii.) **C. A.**—*Reduction of Capital—Companies Act*, 1867, *s.* 10.—If a resolution for reduction of capital, after being passed, is abandoned before the hearing of the petition for confirmation, the Court will give leave forthwith to discontinue the use of the words "and reduced" as part of the company's name.—*Re Mordey*, 53 L.T. 736.

(ix.) **Ch. D.**—*Winding-up Petition—Security for Costs.*—The fact that a petitioner for a winding-up, whose debt is disputed, gives a false address in his petition, is a sufficient ground for ordering him to give security for costs.—*Re Sturges British Motive Power Syndicate*, 53 L.T. 715; 34 W.R. 163.

(x.) **Ch. D.**—*Voluntary Winding-up—Petition for Supervision—Separate Appearance of Company and Liquidator—Costs.*—Upon the hearing of a creditor's petition for the continuation, under supervision, of the voluntary winding-up of a company, the company should appear by its liquidator; for only one set of costs will be allowed as between the company and the liquidator, if they appear separately.—*Re Hall*, 53 L.T. 633; 34 W.R. 56.

(i.) **Ch. D.**—*Commencement of Winding-up.*—After a provisional liquidator had been appointed upon a creditor's petition for the compulsory winding-up of a company, a meeting of the shareholders was held, at which a resolution for voluntary winding-up was passed, which was duly confirmed at a subsequent meeting. Between the dates of the two meetings the petition came on for hearing, when the judge made a compulsory order and continued the provisional liquidator, but directed that, if the resolution to wind-up voluntarily were confirmed, a supervision order should be drawn up, instead of the compulsory order. This was done. *Held*, that the winding-up was to be deemed to have commenced at the date of the confirmatory resolution.—*Re Emperor Life Assurance Co.; e. p. Halliday*, L.R. 31 Ch. D. 78; 55 L.J. Ch. 3; 53 L.T. 591; 34 W.R. 118.

(ii.) **C. A.**—*Receiver—Winding-up—Substitution of Liquidator as Receiver.*—There is no general rule that, upon a company going into liquidation, a person who has been appointed receiver of its property will be displaced in favour of the liquidator: it is a question of the balance of convenience and inconvenience; and where a judge, in the exercise of his discretion, has discharged the receiver appointed before the liquidation, and appointed the liquidator as receiver, the Court of Appeal will be slow to interfere.—*Bartlett* v. *Northumberland Avenue Hotel Co.*, 53 L.T. 611.

(iii.) **Ch. D.**—*Winding-up—Production of Books before Examiner—Practice—"Books Relating to the Company."*—The proper mode of obtaining the production of books under section 115 of the Companies Act, 1862, is by summons according to Form 54 in Schedule 3 to General Orders, November, 1862.—Where the manager of a company in liquidation has carried on a separate business, a cash-book of his, containing an entry relative to a cheque of the company which has passed through his books, is a book relating to the company, which he may be ordered to produce.—*Credit Co.* v. *Webster*, 53 L.T. 419.

(iv.) **C. A.**—*Winding-up—Payment by Surety—Calls—Set-off.*—Decision of Ch. D. (*see* Vol. **10**, p. 6, v.), affirmed.—*Re Norwich Equitable Fire Assurance Co.; Brasnett's Case*, 53 L.T. 569; 34 W.R. 206.

(v.) **Ch. D.**—*Winding-up—Contributory—Companies Act*, 1862, *ss.* 23, 51.—A director of a company who has for a long time allowed his name to remain on the register in respect of shares, cannot, when the rights of creditors have intervened, be heard to allege an irregularity in the issuing of the shares.—*Re Miller's Dale &c. Co.*, 53 L.T. 692; 34 W.R. 192.

(vi.) **C. A.**—*Winding-up—Contributory—Conditional Application—Companies Act*, 1862, *s.* 23.—A. applied for 700 shares in a company, "on condition that I am credited with £1 per share paid into a fund by B." There was no such fund at the time, but subsequently a sum of £700 was paid into a bank in the names of two persons, to be held by them upon trust for payment to the company, if B. should be relieved from certain liabilities within a certain time. 700 shares were allotted to A., the word "conditional" being written against them in the share register. A. sold 400 of the shares to C., to whom certificates for the 400 shares were sent by the company. The contingency upon which the fund in the bank was to be paid to the company never happened. The company having gone into liquidation: *Held*, that the condition upon which A. had applied for the 700 shares was a condition subsequent, and that the names of A. and C. were rightly placed upon the list of contributories.—*Re Southport and West Lancashire Banking Co.; Fisher's Case; Sherrington's Case*, 34 W.R. 49.

(i.) **Ch. D.**—*Winding-up—Contributories—Executors taking Shares.*—A testator, after the amalgamation with another company of a company in which he held shares, received an offer of shares in the new company in exchange for his shares in the old. He died without having replied to the offer. After his death his executors applied for shares in their own names, and shares were allotted to them and registered in their names, and the certificate made out accordingly. They afterwards wrote to the manager of the company asking him to register the shares in the testator's name instead of theirs; which he did. *Held*, that they were personally liable for calls.—*Re Cheshire Banking Co.*, 53 L.T. 632.

(ii.) **Ch. D.**—*Rectification of Register—Companies Act*, 1862, *s.* 35.—In February, 1883, A., a registered shareholder, sold his shares to B., executed a transfer of them with the name of the transferee left in blank, and handed over the transfer and the certificates to B. In May, 1883, C., who derived title from B., deposited the transfer and certificates with D., as security for an advance. D. filled in the transfer with his own name, and in February, 1884, sent the transfer and the certificates to the company, with a letter requesting that the shares might be registered, and new certificates issued, in his name. In April, 1884, the company went into liquidation. Owing to the negligence of the company the shares had not been registered in C.'s name, but still stood in the name of A. *Ordered*, on the application of A., that the list of contributories be varied by striking out A.'s name and substituting C.'s. —*Re Manchester and Oldham Bank*, 54 L.J. Ch. 926.

And *see* Bill of Exchange, p. 32, iii.

Compensation.—*See* Injunction, p. 43, i. Lands Clauses Act, p 44, vii. Railway, p. 57, ii.

Contract:—

(iii.) **Ch. D.**—*Restraint of Trade - Reasonableness of Restriction.*—A stipulation, in an agreement between a fashionable Regent Street tailor and a cutter, prohibiting the cutter, for three years after the termination of his employment by the tailor, from carrying on business as a tailor within a circuit of ten miles from Charing Cross: *Held*, not to invalidate the agreement as being in excess of what was required for the protection of the tailor in his business.—*Nicoll* v. *Beere*, 53 L.T. 659.

And see Local Government, p. 45, iii. Sale of Goods, p. 58, iii.

Costs:—

See Bill of Exchange, p. 32, iii. Company, p. 35, ix., x. County Court. Husband and Wife, p. 41, vi. Mortgage, p. 48, ii. Practice, p. 52, i., x.; p. 53, ii., v., vii.; p. 54, ix.; p. 55, i., ii. Solicitor, p. 62, iv., v.

Counsel.—*See* Practice, p. 55, i., ii. Solicitor, p. 62, iv.

County Court:—

(iv.) **Q. B. D.**—*Costs—Administration Action*—8 *&* 9 *Vict.*, *c.* 95, *s.* 88.—28 *&* 29 *Vict.*, *c.* 99, *s.* 21.—A County Court judge has, in the exercise of his equitable jurisdiction, an absolute discretion as to costs.—*Plumb* v. *Craker*, L.R. 16 Q.B.D. 40.

And see Practice, p. 55, x., xi.

Criminal Law:—

(v.) **C. C. R.**—*Larceny.*—K., intending to lend A. a shilling, handed him a sovereign, believing it to be a shilling. A., when receiving the coin, believed it to be a shilling, but subsequently discovered that it was a sovereign. Upon discovering that it was a sovereign, although he knew that K. had not intended to part with possession of a sovereign, but only

with possession of a shilling, and although he could easily have returned the sovereign to K., he appropriated the coin to his own use. *Held* (1) that he was not guilty of larceny as a bailee within 24 & 25 Vict., c. 96, s. 3; (2) that he was guilty of larceny at common law.—*R.* v. *Ashwell*, 53 L.T. 773.

(i.) **Q. B. D.**—*Eels—Close Time—Freshwater Fisheries Acts*, 1878 *&* 1884 —*Salmon Fishery Act*, 1873.—Eels are fresh water fish within the meaning of section 6 of 47 Vict., c. 11. It is an offence to expose for sale in England, during the close time for England, eels lawfully caught in Ireland.—*Price* v. *Bradley*, 34 W.R. 165.

(ii.) **Q. B. D.**—*Fraud by Agent*—24 *&* 25 *Vict.*, *c.* 96, *s.* 75—*Extradition*—33 *&* 34 *Vict.*, *c.* 52, *s.* 10—*Misdescription and Vague Description of Offence in Warrant—Habeas Corpus.*—"Other agent," in section 75 of 24 & 25 Vict., c. 96, means agent of the same kind as banker &c., *i.e.*, an agent whose business it is to receive money, securities, or chattels, for safe custody or other special purpose.—*Habeas corpus.* Two warrants for the extradition of a prisoner, signed by the same magistrate on the same day, were before the Court. One described the offence in the words of section 75 of 24 & 25 Vict., c. 96. The other described the offence generally as fraud by an agent, which might be an offence under section 75 and might be an offence under section 3 of the Act. An offence under either section would be the subject of extradition. The facts did not disclose an offence under section 75, but did disclose an offence under section 3. The Court, not being satisfied that the magistrate had entertained any charge under section 3, ordered the discharge of the prisoner.—The Court will not, as a rule, hear arguments both on an application for a writ of *habeas corpus* and on an application for the discharge of the prisoner.—*Re De Portugal*, 34 W.R. 42.

(iii.) **C. A.**—*Appeal—Palmer's Act*, *s.* 3—*Judicature Act*, 1873, *s.* 47.—No appeal lies from a decision of the Queen's Bench Division upon an application under 19 & 20 Vict., c. 16, s. 3.—*R.* v. *Rudge*, 34 W.R. 207.

And see Adulteration, p. 30, i. Husband and Wife, p. 42, v. Municipal Election.

Damages.—*See* Landlord and Tenant, p. 43, vi. Master and Servant, p. 47, i. Ship, p. 61, iii.

Deed:—

(iv.) **C. A.**—*Enrolment—Mistake—Rectification—Fines and Recoveries Act*, *s.* 47.—Decision of Ch. D. (*see* Vol. 10, p. 98, iv.) reversed.—*Hall-Dare* v. *Hall-Dare*, 34 W.R. 82.

Defamation:—

(v.) **C. A.**—*Newsvendor.*—A newsvendor who, in the ordinary course of business, sells copies of an issue of a newspaper containing a libel, but without knowing, and without negligence in not knowing, that it contains the libel, or that the newspaper is of such a character that it is likely to contain a libel, is not responsible in damages for publishing the libel.—*Emmens* v. *Pottle*, 55 L.J. Q.B. 51; 34 W.R. 116.

(vi.) **Q. B. D.**—*Privilege—Complaint to Privy Council.*—A letter to the Privy Council, containing charges against a public functionary removable by them, is not absolutely privileged.—*Proctor* v. *Webster*, L.R. 16 Q.B.D. 112; 53 L.T. 765.

(i.) **Q. B. D.**—*Extent of Privilege.*—The defendant, W.'s manager, wrote down and witnessed, at the request of T., a statement that T. had robbed W. with the plaintiff's connivance. W., the defendant's wife and D., another person in W.'s employment, were present on the occasion. The defendant afterwards obtained D.'s signature to the statement. *Held*, not an excess of privilege.—*Jones* v. *Thomas*, 53 L.T. 678; 34 W.R. 104.

Divorce.—*See* Husband and Wife, p. 41, vii.; p. 42, i., ii.

Easement:—

(ii.) **H. L.**—*Building Scheme—Implied Reservation—Notice.*—Decision of C. A. (*see* Vol. 9, p. 66, ii.) reversed.—*Russell* v. *Watts*, L.R. 10 App. Cas. 590.

(iii.) **Ch. D.**—*Ancient Lights—Rebuilding of Premises—Advancement of Wall.*—An alteration in the plane of a window does not necessarily amount to an abandonment of an easement of light in respect of such window.—*Scott* v. *Pape*, 54 L.J. Ch. 914; 53 L.T. 598.

Ecclesiastical Law:—

(iv.) **Q. B. D.**—*Formation of Districts under 6 & 7 Vict., c. 37—Burial Board—Sexton's Fees.*—A burial board for a district consisting of parishes divided under 6 & 7 Vict., c. 37, can, after providing a cemetery for the district, apportion the sexton's fees between the parishes.—*White* v. *Norwood Burial Board*, L.R. 10 Q.B.D. 58; 55 L.J. Q.B. 63; 34 W.R. 123.

(v.) **Liverpool Consistory Court.**—*Faculty—Chancel Gates.*—Faculty for chancel gates granted, the chancel requiring protection.—*Re St. Agnes, Torteth Park*, L.R. 11 P.D. 1.

Eels.—*See* Criminal Law, p. 38, i.

Election:—

(vi.) **Ch. D.**—*Devise and Appointment by Married Woman—Heir-at-law.*—A married woman by her will exercised a power of appointment in favour of her heir-at-law, and purported to devise away from him real estate not settled to her separate use. *Held*, that the heir was not put to his election.—*Re De Burgh Lawson; De Burgh Lawson* v. *De Burgh Lawson*, 55 L.J. Ch. 46; 53 L.T. 522; 34 W.R. 39.

(vii.) **Ch. D.**—*Realty Leased with Option to Purchase.*—A testator, who died in 1869, by his will gave all his real estate and the residue of his personalty to trustees upon trust for sale, conversion and investment, and to pay the income to his wife for life, and to divide the corpus between his children after her death. The wife and two children survived him, and the wife survived the two children, who both died, the second of them in 1876, intestate and without issue. The testator's only realty was a freehold house, which, shortly before his death, he had agreed to let for a term of 20 years, with an option to the tenant to purchase the fee at any time during the term. The widow died intestate in 1885. The house had not been sold, nor the option exercised. *Held*, that the widow could not be considered to have elected to take the house as real estate.—*Re Lewis; Foxwell* v. *Lewis*, L.R. 30 Ch. D. 654; 53, L.T. 387; 34 W.R. 150.

And see Settlement, p. 60, iv.

Estoppel:—

(i.) **C. A.**—*Foreign Judgment—Appearance to Protect Property in case of Judgment by Default.*—Where a defendant appears in a foreign Court and takes his chance of a judgment in his favour, he cannot afterwards be heard to say that he is not bound by the judgment of the foreign Court, although he only appeared in the foreign Court lest his property in the foreign country should be seized, if judgment by default should be given against him by the foreign Court.—*Voinet* v. *Barrett,* 55 L.J. Q.B. 39; 34 W.R. 161 (N.P.: 54 L.J. Q.B. 431).

(ii.) **C. A.**—*Res Judicata—Judicature Act,* 1873, *s.* 24, *sub-s.* 7.—An order of the Court for the re-delivery of shares, made by consent in an action brought for the purpose, the claim including the usual prayer for further relief, is a bar to a subsequent action for damages for the detention of the shares.—*Serrao* v. *Noel,* L.R. 15 Q.B.D. 549.

And see Bankruptcy, p. 30, iv. Company, p. 36, v. Mortgage, p. 47, v.; p. 48, v. Sewer, p. 60, vi. Ship, p. 61, vii.

Evidence:—

(iii.) **Ch. D.**—*Evidence of Husband as to Non-access to Wife—Evidence Further Amendment Act,* 1869. *s.* 3.—The proceedings instituted in consequence of adultery to which the above section refers are proceedings in the Divorce Court.—*Re Walker; re Jackson,* 53 L.T. 660; 34 W.R. 95.

(iv.) **Ch. D.**—*Illegitimacy—Declaration of Deceased Person—Family Tradition.*—Upon the question of the illegitimacy of a deceased person, declarations made by the deceased himself, asserting his own illegitimacy, are admissible in evidence; and family tradition is admissible in corroboration of such declarations.—*Re Perton; Pearson* v. *A.-G.,* 53 L.T. 707.

(v.) **P. D.**—*Statements by Master of Vessel.*—Statements in a letter from the master of a ship to his owners, as to what he did or saw, or what orders he gave, are evidence against the owners; but those which consist of his opinions are not.—*The Solway; Burt* v. *Livingstone,* L.R. 10 P.D. 137; 54 L.J. P.D & A. 83; 53 L.T. 680; 34 W.R. 232.

And see Company, p. 36, iii. Husband and Wife, p. 42, iii. Municipal Election, p. 48, vii. Practice, p. 52, viii.; p. 53, i.-v.; p. 54, v.

Excise.—*See* Revenue.

Executor:—

(vi.) **C. A.**—*Right of Retainer.*—Damages for breach of a covenant to assign a policy, or to replace furniture, if sold, with other furniture of a like value, being in their nature a fixed sum, may be a proper subject of an executor's right of retainer. But that right of an executor is in all cases confined to assets which have come into his hands, or have been paid into Court, while he was executor. When the legal personal representative of a testator is one person, and the legal personal representative of his executor another, the latter, being able to sue the former, cannot exercise a right of retainer against any part of the original testator's estate.—*Re Compton; Norton* v. *Compton,* L.R. 30 Ch. D. 15; 54 L.J. Ch. 904; 53 L.T. 410.

And see Company, p. 34, iv.; p. 37, i. Will, p. 69, ii.

Extradition.—*See* Criminal Law, p. 38, ii.

Foreign Judgment.—*See* Estoppel, p. 40, i.

Fraud.—*See* Principal and Agent, p. 56, i.

Guardian and Ward.—*See* Parent and Child. Practice, p. 52, ix.

Habeas Corpus.—*See* Bankruptcy, p. 30, v. Criminal Law, p. 38, ii. Husband and Wife, p. 42, viii. Practice, p. 55, vii. Probate.

Highway:—

(i.) **Ch. D.** — *Waterpipes—Nuisance—Prescription—Acquiescence.*—There can be no prescription, where there cannot have been a grant.—The acquiescence of a local board in a corporation committing a nuisance by entering upon, and breaking up, highways, for purposes of water-supply, does not confer upon the corporation such a right as will enable them to restrain the local board by injunction from interfering with the continuation of the nuisance.—*Corporation of Preston* v. *Fullwood Local Board* (*No.* 1), 53 L.T. 718; 34 W.R. 196.

Hops.—*See* Bankruptcy, p. 31, iv.

Husband and Wife:—

(ii.) **C. A.**—*Separate Estate—Payments of Husband for Wife after Marriage—Married Women's Property Act,* 1882.—Decision at N.P. (*see* Vol. 10, p. 100, ix.) affirmed.—*Butler* v. *Butler*, 55 L.J. Q.B. 55; 34 W.R. 133.

(iii.) **Ch. D.**—*Married Women's Property Act,* 1882, *s.* 5.—*Reversionary Interest—Accruer of Title.*—The above section *held* not to apply to property to which a married woman was entitled in reversion at the commencement of the Act, and which had fallen into possession since the Act.—*Re Hobson; Webster* v. *Rickards*, 34 W.R. 195.

(iv.) **Ch. D.**—*Contingent Interest before* 1883 *Vesting after* 1883—*Married Women's Property Act,* 1882, *s.* 5.—An infant, entitled to a share under a codicil contingently upon attaining twenty-one, settled the share, upon her marriage, in 1879. She came of age in 1884. *Held*, that she was entitled to the share as her separate property.—*Re Dixon; Dixon* v. *Smith*, 54 L.J. Ch. 964.

(v.) **Ch. D.**—*Restraint upon Anticipation and Alienation—Accumulations.*—A testator bequeathed his residue to trustees, upon trust to convert and invest, and pay an annuity to his wife, and during the life of his wife to accumulate the surplus income; after the death of his wife he gave the capital and accumulations to his children, the shares of daughters to be for their separate use, without power of anticipation or alienation during the wife's lifetime. *Held*, that married daughters were not entitled to receive any part of the capital, either of the original shares, or of the accumulations, during the lifetime of the wife, but only to receive the income of the securities in which the accumulations were invested.—*Re Spencer; Thomas* v. *Spencer*, L.R. 30 Ch. D. 183; 55 L.J. Ch. 80; 34 W.R. 62.

(vi.) **Ch. D.**—*Restraint upon Anticipation—Costs.*—A restraint upon anticipation is intended for the protection of a married woman outside the Court; it does not prevent the Court from directing her income to be applied in payment of the costs of proceedings which she has improperly instituted.—*Re Andrews; Edwards* v. *Dewar*, L.R. 30 Ch. D. 159; 54 L.J. Ch. 1049; 53 L.T. 422; 34 W.R. 62. *Re Glanville; Ellis* v. *Johnson*, 53 L.T. 752; 34 W.R. 118.

(vii.) **P. D.**—*Divorce—Adultery of Petitioner*—Husband's petition for divorce on the ground of the wife's adultery. The husband had committed an act of adultery some years before, when the worse for drink; which the wife had condoned. Petition dismissed.—*Grosvenor* v. *Grosvenor*, 34 W.R. 140.

(i.) **P. D.**—*Condonation—Claim against Co-respondent.*—Condonation of a wife's adultery is no bar to a claim for damages against her adulterer.—*Pomero* v. *Pomero*, L.R. 10 P.D. 174; 54 L.J. P.D. & A. 93; 34 W.R. 124.

(ii.) **P. D.**—*Conduct Conducing to Adultery.*—A husband who wilfully and persistently leaves his wife without that protection which the society of a husband affords is guilty of conduct conducive to adultery.—*Hawkins* v. *Hawkins*, L.R. 10 P.D. 177; 54 L.J. P.D. & A. 94; 34 W.R. 47.

(iii.) **P. D.** — *Nullity Suit—Evidence.*—A petitioner for a declaration of nullity of marriage by reason of her supposed husband's impotence may be cross-examined as to her own adultery.—*M.* v. *D.*, L.R. 10 P.D. 175; 34 W.R. 48.

(iv.) **P. D.**—*Nullity of Marriage—Variation of Settlements.*—Where a marriage has been annulled at the suit of the wife, and there are no children, the Court has power to order a re-assignment to her, free from the trusts of the settlement, of the property which she had brought into settlement.—*A.* v. *M.*, L.R. 10 P.D. 179.

(v.) **P. D.**—*Separation Order—Jurisdiction of Magistrates—24 & 25 Vict., c. 100, s. 43—Matrimonial Causes Act, 1878, s. 4.*—Magistrates may make a separation order against a husband for an aggravated assault, without sentencing him to imprisonment or a fine.—*Woods* v. *Woods*, L.R. 10 P.D. 172.

(vi.) **P. D.**—*Restitution of Conjugal Rights—Service out of Jurisdiction.* Petition for restitution of conjugal rights. Service of citation and copy petition out of the jurisdiction, set aside —*Chichester* v. *Chichester*, L.R. 10 P.D. 186; 34 W.R. 65.

(vii.) **P. D.**—*Alimony—Injunction.*—The Court will not grant an injunction to restrain a husband from removing his property from the country for the purpose of defeating any claim upon him which his wife may substantiate.—*Newton* v. *Newton*, L.R. 11 P.D. 11; 34 W.R. 123.

(viii.) **P. D.**—*Attachment of Husband for not finding Security for Wife's Costs—Debtor's Act, 1869.*—Wife's petition for dissolution of marriage. *Held*, that the Court still had jurisdiction to attach a husband for not finding security for his wife's costs of suit.—*Lynch* v. *Lynch*, L.R. 10 P.D. 183; 54 L.J. P.D. & A. 93; 34 W.R. 47.

And see Bankruptcy, p. 31, vi. Election, p. 39, vi. Evidence, p. 40, iii. Lunatic, p. 46, i. Practice, p. 54, vii., ix.; p. 55, vii. Settlement, p. 59, v., vi.; p. 60, iv.

Income Tax.—*See* Building Society, p. 33, iv. Revenue, p. 58, ii.

Infant:—

(ix.) **C. A.**—*Charge upon Real Estate for Future Maintenance.*—There is no jurisdiction to charge the interests of infants, entitled to an estate successively in tail in remainder expectant on a life interest, with repayment, if and when any of them shall become entitled in possession, of an advance calculated to furnish a yearly sum for their maintenance and to cover the premiums on an insurance against the risk of none of them becoming entitled in possession.—*Re Hamilton*, 34 W.R. 203.

And see Practice, p. 54, viii. Trustee, p. 65, ii.

Injunction:—

(x.) **C. A.**—*Trade Name—Interim Injunction.*—The gist of an action for an alleged wrongful interference with a trade name is that what the defendant has done is in reason calculated to induce people to take his goods as those of the plaintiff. Motion on behalf of the proprietor of *The Mail*, an old-established newspaper appearing at 11 a.m.

on alternate week-days, and sold at 2d., for an *interim* injunction to restrain the publication, under the title of *The Morning Mail*, of a new newspaper appearing daily at 3 a.m., price ½d., and not like *The Mail* in appearance, dismissed with costs.—*Walter* v. *Emmott*, 54 L.J. Ch. 1059; 53 L.T. 437.

(i.) **C. A.**—*Arbitration under Lands Clauses Act—Judicature Act*, 1873, *s.* 25 (8).—There is no jurisdiction to restrain by injunction proceedings for the assessment of compensation under the Lands Clauses Consolidation Act, 1845.—*London and Blackwall Railway Co.* v. *Cross*, 34 W.R. 201.

And see Highway. Husband and Wife, p. 42, vii. Solicitor, p. 62, ii.

Insurance:—

(ii.) **C. A.**—*Fire Insurance—Option to Reinstate or Replace Property—Determination of Insurer's Term.*—A clause, in a fire insurance policy upon goods, that "the insurer may, if he thinks fit, reinstate or replace property damaged or destroyed," does not enable the insurer, when the place in which the goods were has been destroyed or taken out of the possession of the insured, to avoid all liability by exercising his option to reinstate or replace; nor, on the other hand, does the assured acquire, under such a clause, a right to be paid in money upon its becoming impossible to reinstate or replace the goods in the place in which they were.—*Anderson* v. *Commercial Union Assurance Co.*, 34 W.R. 189.

(iii.) **Q. B. D.**—*Life Insurance—Form of Proposal—"Residence."*—A life policy was to be void if anything contrary to the truth were stated in the proposal. The "residence" of the assured "(in full)" was given in the form of proposal as "191, G. Ancots Street, Manchester." The assured resided sometimes in England, sometimes in Ireland; when in England, with one son, when in Ireland, with another. When the proposal was made and the policy effected, and for three months afterwards, he was residing with the former son at the residence stated in the proposal. *Held*, that there was not sufficient evidence to justify a finding that the residence was untruly stated in the proposal.—*Grogan* v. *London and Manchester Industrial Assurance Co.*, 53 L.T. 763.

(iv.) **C. A.**—*Marine Insurance—Time Policy—Memorandum against Average.*—Decision at N. P. (*see* Vol. 10, 79, viii), reversed.—*Stewart* v. *Merchants' Marine Insurance Co.*, 34 W.R. 208.

And see Revenue, p. 58, ii. Ship, p. 61, iv.

Justice of the Peace.—*See* Husband and Wife, p. 42, v. Mandamus. Water-rate.

Land:—

(v.) **N. P.**—*Purchase of Pretenced Title—32 Hen. VIII., c.* 9, *s.* 2—8 *&* 9 *Vict., c.* 106, *s.* 6.—No forfeiture can be incurred under 32 Hen. VIII., c. 9, s. 2, unless the purchaser knows that he is purchasing, not merely a mere right of entry, with knowledge that the seller has not been in possession for a whole year, but a fictitious title; and a title is not necessarily fictitious because the right purchased is barred by the Statute of Limitations.—*Kennedy* v. *Lyell*, L.R. 15 Q.B.D. 491; 53 L.T. 466.

Landlord and Tenant:—

(vi.) **Q. B. D.**—*Covenant for Quiet Enjoyment—Breach—Damages.*—It is a breach of a covenant for quiet enjoyment contained in a lease—and a breach for which the lessee is not only entitled to nominal damages—if the lessor gives to the lessee's sub-tenants notice to pay their rent to himself, and the sub-lessees pay their rent to him accordingly; nor is the fulfilment by the lessee of his covenant to pay rent a condition precedent to his right to sue for such a breach of covenant.—*Edge* v. *Boileau*, 34 W.R. 103.

(i.) **C. A.**—*Yearly Tenancy—Sufficiency of Notice to Quit.*—Decision of Q. B. D. (*see* Vol. **10**, p. 103) affirmed.—*Barlow* v. *Teal*, L.R. 15 Q.B.D. 501; 54 L.J. Q.B. 564; 34 W.R. 54.

(ii.) **C. A.**—*Agreement to Underlet—Construction.*—An agreement between the plaintiff and the defendant for an underlease of premises forming part of the property of St. Bartholomew's Hospital, after providing that the underlease should contain all ordinary and customary covenants, including a covenant not to assign without the consent of the plaintiff, provided that it should also contain all such other covenants as were contained in the original lease. The defendant objected to execute an underlease containing: (1) a covenant to refer disputes to the original lessors, *the governors of the hospital*; (2) a covenant not to assign without the consent of *the governors of the hospital*; (3) a covenant that mesne demises should be prepared by the solicitor to *the hospital*; his contention being that he was to undertake towards *the plaintiff* such obligations as the latter had undertaken towards the hospital. *Held*, that the defendant was bound to enter into all the three covenants.—*Haywood* v. *Silber*, L.R. 30 Ch. D. 404; 34 W.R. 114.

(iii). **Q. B. D.**—*Distress for Rent—Agisted Cattle—Agricultural Holdings Act*, 1883, *s.* 45.—"Milk for meat" is a "fair price," within 46 & 47 Vict., c. 61, s. 45.—*London and Yorkshire Bank* v. *Belton; Ross and Smith claimants*, L.R. 15 Q.B.D. 457; 54 L.J. Q.B. 568; 34 W.R. 31.

(iv.) **N. P.**—*Distress—Ship in Course of Building.*—A shipbuilder was building a ship in his yard for a customer. The price was payable in instalments, each instalment becoming due on the completion of a certain amount of work. After several instalments had been paid, the shipbuilder became in arrear with his rent. *Held*, that his landlord was entitled to distrain the ship.—*Clark* v. *Millwall Dock Co.*, 53 L.T. 316.

(v.) **C. A.**—*Distress—Lodgers' Goods Protection Act*, 1871, *s.* 1.—A declaration under the above section is not bad because it does not state that the declarant is a lodger; nor, if no rent is due from the declarant to his immediate landlord, because it does not say so.—*E. p. Harris*, 53 L.T. 655; 34 W.R. 132.

Lands Clauses Act:—

(vi.) **Ch. D.**—*S.* 9—*Surveyors' Certificate.*—The surveyors' declaration in writing is an essential part of the procedure under the above section: the part of the section which relates to it is not merely directory.—*Bridgend Gas and Water Co.* v. *Lord Dunraven*, 53 L.J. Ch. 91; 53 L.T. 714; 34 W.R. 119.

(vii.) **Ch. D.**—*S.* 80—"*Costs*"—Lands belonging to a city company having been compulsorily taken by a railway company, and the compensation moneys paid into Court, orders were made for the investment of a portion of the moneys in the purchase of hereditaments, and for the application of a further portion of the moneys in the erection of buildings upon the hereditaments. The Court also ordered that, pursuant to section 80 of the Act, the railway company should pay the city company's "costs (including therein all reasonable charges and expenses incidental thereto) of the investment." *Held*, that the railway company were not bound to pay the fees of an architect and a surveyor employed by the city company to plan and superintend the buildings.—*Re Butchers' Co.*, 53 L.T. 491.

And see Injunction, p. 43, i. **Railway**, p. 57, ii. **Sewer**, p. 60, vii.

Libel.—*See* Defamation.

Lien:—

(i.) **Ch. D.**—*Statute-barred Debt—Loss of Possession of Subject of Lien.*—A lien may be asserted in respect of a debt barred by a statute for the limitation of actions. The lien of a firm of solicitors is not destroyed by a person who was a member of the firm at the time when the lien was created, but who is so no longer, taking away the documents, the subject of the lien, without the consent of his late partners.—*Re Carter; Carter* v. *Carter*, 53 L.T. 630; 34 W.R. 57.

And see Auctioneer, p. 30, iii. Solicitor, p. 62, v.

Limitation of Actions:—

(ii.) **C. A.**—*Bond by Surety for Payment of Mortgage Debt.*—Where a bond is given for the purpose of guaranteeing the payment by the mortgagor of the mortgage debt, and the mortgagor makes payments which prevent the remedy on the mortgage from being barred, the remedy on the bond is not barred, if the bond be less than twenty years old.—*Re Powers; Lindsell* v. *Phillips*, L.R. 30 Ch. D. 291; 53 L.T. 647.

And see Lien. Lunatic, p. 46, i.

Local Government:—

(iii.) **C. A.**—*Urban Authority—Officer Concerned in Contract—Illegality.*—Decision at N. P. (*see* Vol. 10, p. 103, vi.) reversed, on the ground that the contract was void.—*Melliss* v. *Shirley &c. Local Board*, 34 W.R. 187.

(iv.) **C. A.**—*Metropolis Management Act*, 1855, *s.* 6—*Vestryman—Qualification.*—Decision at N. P. (*see* Vol. 10, p. 103, iii.), affirmed.—*Mogg* v. *Clark*, L.R. 16 Q.B.D. 79; 55 L.J. Q.B. 69; 34 W.R. 66.

(v.) **Q. B. D.**—*Metropolis Management &c. Act*, 1882, *s.* 8—"*New Street*"—"*Street for Foot Traffic only.*"—The respondent had pulled down some warehouses having an approach to E. street, and built artizans' dwellings in flats, with a gateway and narrow courtyard, on the site, and somewhat widened the approach. *Held*, that he had not laid out a road within the meaning of the above section.—*Metropolitan Board of Works* v. *Nathan*, 34 W.R. 164.

(vi.) **C. A.**—*Metropolis Local Management Act*, 1855, *ss.* 105, 250—"*House*"—"*Owner.*"—A building is a house within section 105 of the above Act, if it is capable of being used as a dwelling for man, although its use be temporarily restricted by agreement to some other purpose; and a person is not the less an owner of premises within the 250th section of the Act, because the premises cannot be let at a rack-rent while they belong to him.—*Wright* v. *Ingle*, 34 W.R. 220.

(vii.) **Ch. D.**—57 *Geo. III.*, c. xxix., *s.* 80—*Compulsory Purchase—Severance.*—The above section does not empower a public authority to take the whole, when they actually require part only, of a house for the purpose of widening a street, if the owner of the house reasonably objects to their doing so.—*Teulière* v. *Vestry of St. Mary Abbotts, Kensington*, L.R. 30 Ch. D. 642; 55 L.J. Ch. 23; 53 L.T. 422.

(viii.) **C. A.**—*Streets — Premises "Fronting, Adjoining or Abutting"—Apportionment of Expenses—Public Health Act*, 1875.—Decision of Q. B. D. (*see* Vol. 10, p. 103, v.) affirmed.—*Lightbound* v. *Higher Bebington Local Board*, 34 W.R. 219.

And see Public Health Act.

Lunatic:—

(i.) **C. A.**—*Order for Detention—Order of Discharge*—8 *&* 9 *Vict.*, *c.* 100, *ss.* 72, 99—16 *&* 17 *Vict.*, *c.* 96, *s.* 4; *Sched. A.*, *No.* 1—*Limitation of Actions*—21 *Jac. I.*, *c.* 16, *ss.* 3, 7—"*Discovert.*"—In a statement of particulars attached to an order for reception into a private lunatic asylum, the question: "Whether first attack," was answered thus: "For the last twenty years has been subject to what is termed hysteria;" and to the question "When and where previously under care and treatment," it was answered: "During this period of twenty years has been constantly under treatment." *Held*, sufficient.—"After the Commissioners' letter I suppose that I must consent to Mrs. L.'s discharge; and I beg you will carry out their suggestion as soon as you may think it advisable:" *Held*, not an order for discharge.—The Married Women's Property Act, 1882, renders a married woman discovert within the meaning of 21 Jac. I., s. 7.—*Lowe* v. *Fox*, L.R. 15 Q.B.D. 667; 54 L.J. Q.B. 561; 34 W.R. 144.

(ii.) **C. A.**—*Lunacy Regulation Act*, 1862—*Order in Lunacy*, 1883, *r.* 59.—Signature by the London agent of the petitioner's solicitor is not a sufficient signature under the above rule.—*Re Summerville*, 34 W.R. 185.

(iii.) **C. A.**—*Lunacy Regulation Act*, 1853, *s.* 47—*Lunacy Regulation Act*, 1862, *s.* 3.—An inquiry cannot be directed as to the time from which an alleged lunatic has been of unsound mind.—*Re Danby* (an alleged lunatic), L.R. 30 Ch. D. 321; 34 W.R. 125.

(iv.) **C. A.** *New Trustees—Lunacy Regulation Act*, 1853, *s.* 137.—A will contained a power to the trustees or trustee for the time being, with the consent of the tenant for life, to appoint new trustees. All the trustees were dead. The tenant for life was lunatic. Upon the petition, under the Trustee Act, of his committee, for the appointment of new trustees: *Held*, that the appointment ought to have been made by the executor of the last surviving trustee, the committee consenting in chambers.—*Re Garrod*, 34 W.R. 157.

And see Trustee, p. 65, iii.

Mandamus:—

(v.) **Q. B. D.**—*Exclusion of Admissible Evidence.*—A mandamus to justices to hear and determine will not be granted on the ground that, in adjudicating upon a case, they have excluded admissible evidence.—*R.* v. *Justices of Yorkshire*, 53 L.T. 728; 34 W.R. 108.

Marshalling.—*See* Auctioneer.

Master and Servant:—

(vi.) **Q. B. D.**—*Employers' Liability Act*, 1880—*Evidence of Negligence.*—The plaintiff was employed at the defendants' paper-mill to pass jute through a machine. The roller which constituted the feeder of the machine was constructed in eight sections, which were about an eighth of an inch apart. The jute was sometimes caught in these interstices and required to be removed. While removing on obstruction of this kind, the plaintiff lost three of his fingers. The defendants' attention had been called to the defect in the roller, and they had consequently procured a new roller in one piece, but the new roller had not yet been attached to the machine, although there had been opportunities of attaching it. *Held*, that there was evidence that the negligence of the defendants was the cause of the injury sustained by the plaintiff.—*Paley* v. *Garnett*, L.R. 16 Q.B.D. 52.

(i.) **Q. B. D.**—*Employers' Liability Act*, 1880, *s.* 3.—There is nothing in the above section to prevent a workman from recovering, within the limit as to amount, damages in respect of loss of wages for overtime work under another employer.—*Borlick* v. *Head*, 34 W.R. 102.

Metropolis Management Acts.—*See* Local Government, p. 45, iv.-vii.

Mine.—*See* Railway, p. 57, iii.

Mistake:—

(ii.) **C. A.**—*Release—Trustee—Lapse of Time.*—Release to a trustee set aside, on the evidence of the releasor, corroborated by the tenor of the deed, after the death of the trustee, and more than twenty years after its execution.—*Re Garnett; Gandy* v. *Macaulay*, L.R. 31 Ch. D. 1.

And see Bankruptcy, p. 31, viii. Deed.

Mortgage:—

(iii.) **Q. B. D.**—*Priority—Assignee of Mortgage.*—Prior to May, 1879, W. mortgaged certain houses and premises, by deposit of the title-deeds, to G., to secure £200 and interest. In May, 1879, he gave a legal mortgage over the same property to B., to secure a debt. The mortgage to B. was made subject to the mortgage to G. In June, 1879, he executed a second legal mortgage of the property to R., to secure £250, R. paying off G.—who delivered the title-deeds to him—and handing the balance to W. R. had no notice of the mortgage to B. *Held*, that R.'s mortgage was entitled to priority over that of B. in respect of the amount paid to G.—*Mason* v. *Rhodes*, 53 L.T. 324.

(iv.) **Ch. D.**—*Priority—Agreement to Execute Legal Mortgage.*—A person who advances money upon a legal mortgage will not be postponed to a prior equitable mortgagee, merely because the mortgagor had contracted to execute a legal mortgage to the latter.—*Garnham* v. *Skipper*, 34 W.R. 135.

(v.) **C. A.**—*Receipt Indorsed for Sum Larger than Advance—Assignment for Full Amount—Equities between Mortgagor and Assignee.*—The mortgagor of an equitable interest, by parting with the mortgage-deed with a receipt indorsed upon it for an amount which is treated throughout the deed as the amount advanced, estops himself from denying the accuracy of that amount as against a *bonâ fide* transferee for value of the mortgage.—*Bickerton* v. *Walker*, 53 L.T. 731; 34 W.R. 141.

(vi.) **C. A.**—*Equitable Charge by Deposit—Ineffectual Transfer of Charge—Right to Deeds.*—A mere equitable mortgagee by deposit is not a pawnee of the deeds, but holds them merely as incident to his charge on the land. Delivery of the deeds by him to a volunteer, accompanied by a declaration that he gives to the latter the deeds and the money due upon them, does not pass either the equitable charge, or any special property in the deeds.—*Re Richardson; Shillito* v. *Hobson*, L.R. 30 Ch. D. 396; 53 L.T. 746.

(vii.) **Ch. D.**—*Payment-off—Mortgagee's Right to Notice.*—The rule that, when a mortgagor gives notice to pay off the mortgage, and does not make payment on the appointed day, the mortgagee is entitled to a fresh six months' notice, or to six months' interest in lieu of notice, has no application in a case where the mortgagee has been party to an order for the payment of his debt out of a fund in Court. In such a case the mortgagee is only entitled to additional interest up to the actual day of payment.—*Re Moss; Levy* v. *Sewell*, L.R. 31 Ch. D. 90; 55 L.J. Ch. 87; 34 W.R. 59.

(i.) **Ch. D.**—*Practice—Action by Second Mortgagee for Redemption and Foreclosure—Form of Order.*—In an action by a puisne mortgagee to redeem the prior mortgagees and foreclose the mortgagor, the usual decree having been made at the hearing, the minutes should provide "that, in default of the plaintiff redeeming, the action is to stand dismissed with costs."—*Hallett* v. *Furze*, 34 W.R. 225.

(ii.) **Ch. D.**—*Foreclosure—Costs—County Court Scale—Foreclosure Action.*—The mortgage was for £65 18s. 10d. Both parties lived at Waltham, Essex. Ordinary decree for foreclosure and taxation of plaintiff's costs; the costs to be taxed not to exceed the costs of a similar action in the County Court.—*Crozier* v. *Dowsett*, L.R. 31 Ch. D. 67; 53 L.T. 592.

(iii.) **C. A.**—*Improvements by Mortgagee.*—A mortgagee in possession will not be charged with an increased rental on account of permanent improvements which he has made, and at the same time not allowed to bring into account his outlay upon such improvements.—*Bright* v. *Campbell*, 54 L.J. Ch. 1,077; 53 L.T. 428.

(iv.) **C. A.**—*Costs of Abortive Sale.*—Decision of Ch. D. (*see* Vol. 9, p. 36, vi.) affirmed.—*Farrer* v. *Lacy*, L.R. 31 Ch. D. 42; 53 L.T. 515; 34 W.R. 22.

(v.) **Ch. D.** — *Right to Follow Assets of Deceased Mortgagor — Stale Demand.*—Mortgagees not allowed to follow chattels, originally part of their security, more than twenty years after the death of the mortgagor and their own acquiescence in the distribution of the chattels as part of his personal estate.—*Blake* v. *Gale*, 53 L.T. 689; 34 W.R. 177.

And see Company, p. 35, ii., iii. Limitation of Actions. Partnership, p. 51, i.

Mortmain.—*See* Will, p. 68, vi.

Municipal Election :—

(vi.) **Q. B. D.**—*Application for Relief from Consequences of Illegal Practice—Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 20.*—The Court will not entertain a candidate's application under the above section, pending a petition against him on the ground of bribery; at any rate, if the petitioner relies upon the illegal practice, the subject of the application, as evidence of the bribery. — *E. p. Wilks*, L.R. 16 Q.B.D. 114.

(vii.) **Q. B. D.**—*Evidence of Agency—Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 14—Joint Conviction for two Offences.*—B., a candidate at a municipal election, was convicted of causing a handbill and a placard respectively to be printed without the printer's name and address. The handbill had reference to the election, and purported to be signed by B. It was printed by the instructions of F., a brother of B., who resided with him. The printer had made out the account for it to B., but had not been paid. *Held*, that there was no evidence that F. was B.'s agent to cause the handbill to be printed; and that the conviction, being for both offences with a single penalty, was bad altogether.—*Bettesworth* v. *Allingham*, L.R. 16 Q.B.D. 44.

Newspaper.—*See* Injunction, p. 42, x.

Nuisance.—*See* Highway. Public Health Act, p. 57, i.

Parent and Child :—

(viii.) **Ch. D.**—*Polygamous Marriage—Custody of Children.*—Application of S., an Englishwoman who had contracted a polygamous alliance with the late Nawab Nazim of Bengal, a Hindoo Mahomedan, for the custody of the children of the union, all of whom were infants above the age of seven years. The Nawab had recognized the children as legitimate

and appointed guardians to them by his will; and S. had contracted with him that he should have the sole control of the children. It was admitted that the testamentary guardians attended properly to the interests of the children; and, on the other hand, there was no imputation against S. The Court refused the application, but held that S. was entitled to access to the children.—*Re Ullee*, 53 L.T. 711.

Parish.—*See* Ecclesiastical Law, p. 39, iv.

Parliament:—

(i.) **Q. B. D.**—*Registration—Household Franchise—Industrial Trainer to Workhouse*—48 *Vict.*, *c.* 3, *s.* 3.—The industrial trainer to a workhouse inhabited, and had the exclusive use of, two rooms in the workhouse, by virtue of his office. The master inhabited another part of the workhouse. It was the duty of the master to report the trainer to the guardians for breach of rules. The guardians themselves had a board-room at the workhouse. *Held*, that the trainer was entitled to the franchise, as the exclusive occupier of a dwelling-house.—*Adams* v. *Ford* (*or Fox*), 55 L.J. Q.B. 13; 53 L.T. 666; 34 W.R. 64.

(ii.) **Q. B. D.**—*Registration—Household Franchise—Shop Assistants*—48 *Vict.*, *c.* 3, *s.* 3.—A shopman occupied exclusively a bed-room, allocated to him by virtue of his employment, upon premises belonging to his employer. He and others in the same employment took their meals in a common sitting-room. A caretaker inhabited the house and exercised control over the inmates by the orders of the employer; but the employer did not himself inhabit the house, nor did any one in his employment under whom the shopman served. *Held*, that the shopman was entitled to the franchise.—*Stribling* v. *Halse*, 55 L.J. Q.B. 15.

(iii.) **Q. B. D.**—*Registration—Household Franchise—Soldiers in Barracks*—47 *&* 48 *Vict.*, *c.* 3, *s.* 3.—"Service," in the above section, applies to the service of the Crown. A soldier or officer living in barracks is not disentitled to the franchise by the fact that a soldier or officer of superior grade also lives in the barracks.—*Atkinson* v. *Collard*, *and other cases*, 55 L.J. Q.B. 18; 53 L.T. 670; 34 W.R. 75.

(iv.) **Q. B. D.**—*Registration—Inhabitant Occupier—Constructive Inhabitancy—Burden of Proof*—47 *&* 48 *Vict.*, *c.* 3, *s.* 3.—Where during a portion of the qualifying period there has been no inhabitancy in fact, it lies on the claimant to prove a constructive inhabitancy, which implies both an intention of returning, and an ability to return without breach of legal obligation.—*Ford* v. *Elmsley*, 55 L.J. Q.B. 24; 53 L.T. 675; 34 W.R. 78. *Ford* v. *Barnes*, 55 L.J. Q.B. 24; 53 L.T. 675.

(v.) **Q. B. D.**—*Registration—Household Franchise—Undergraduates of Oxford and Cambridge*—2 *&* 3 *Will. IV.*, *c.* 45, *s.* 78; 30 *&* 31 *Vict.*, c. 102, *s.* 3, *sub-s.* 2; 48 *Vict.*, c. 15, *s.* 15.—An undergraduate of Oxford or Cambridge who is not "permitted to reside" during a portion of the year is not entitled, under 30 & 31 Vict., c. 102, to a vote.—*Tanner* v. *Castor*; *Banks* v. *Mansell*, 55 L.J. Q.B. 27; 53 L.T. 663; 34 W.R. 41.

(vi.) **Q. B. D.**—*Registration—County Vote—Equitable Interest in Freehold Lands*—6 *Vict.*, *c.* 18, *s.* 78.—A proprietor of shares in the Stock Exchange (which are transmissible as personal estate) is not entitled to a vote as a freeholder.—*Watson* v. *Black*, 55 L.J. Q.B. 31.

(vii.) **Q. B. D.**—*Registration—Successive Occupation*—48 *&* 49 *Vict.*, c. 23, *s.* 17.—Claim to a vote for Lewisham in respect of the occupation of two houses in succession. One of the houses was at Beckenham, the other at Lower Sydenham. Before the coming into operation of the above Act both Beckenham and Lower Sydenham were included in the Western Division of Kent; but under the Act Beckenham was

included in the Sevenoaks division of that county, and Lower Sydenham in the new Parliamentary Borough of Lewisham. Claim allowed under the above section.—*Down* v. *Steele*, 55 L.J. Q.B. 36.

(i.) **Q. B. D.**—*Registration—Parochial Relief.*—During the qualifying period the appellant, having applied to a relieving officer for work, was set to stone-breaking, for which he received, out of the parochial funds for the relief of the poor, a sum exceeding the value of his work. *Held*, that he was disqualified from voting, on the ground that he had received parochial relief. — *Magarrill* v. *Whitehaven &c. Overseers*, 55 L.J. Q.B. 38; 53 L.T. 667.

(ii.) **Q. B. D.**—*Registration—Receipt of Alms—2 Will. IV., c. 45.*—Claim to the franchise by an occupant of an almshouse belonging to a charity established for the benefit of certain deserving persons unable to maintain themselves by their own exertions. The "alms-persons" received weekly a sum of money out of the charity and had certain annual allowances. They were liable to removal by the visitors for misbehaviour. *Held*, that the claimant was disqualified for the franchise by reason of the receipt of alms.—*Baker* v. *Town Clerk of Monmouth*, 53 L.T. 668; 34 W.R. 64.

(iii.) **C. A.**—*Registration—Amendment of List of Voters—Nature of Qualification—Declaration—41 & 42 Vict., c. 26, ss. 24, 28.*—Occupation of a house is a different qualification from occupation of houses in succession.—Without a declaration under section 24, the revising barrister has no power under section 28, of 41 & 42 Vict., c. 26, to amend the list of voters by substituting one kind of qualification for another.—*Foskett* v. *Kaufman*, 55 L.J. Q.B. 1; 34 W.R. 90.

(iv.) **Q. B. D.**—*Registration—Amendment—Declaration as to Misdescription—Time—41 & 42 Vict., c. 26, s. 24; 48 & 49 Vict., c. 23, s. 30 (a).*—The revising barrister has no power to receive a declaration as to misdescription under section 24 of 41 & 42 Vict., c. 26, if not sent to the town clerk within the prescribed time.—*Daking* v. *Fraser*, 55 L.J. Ch. 11.

(v.) **C. A.**—*Registration—Amendment—41 & 42 Vict., c. 26, s. 28.*—The alteration, in an occupiers' list of voters for a county, of the description of the nature of a qualification from "tenement and garden" to "dwelling-house tenement," the description of the qualifying property being "part of bailiff's tenement:" *Held*, within the revising barrister's power of amendment for the purpose of more clearly and accurately defining qualifications.—*Dashwood* v. *Ayles*, 55 L.J. Q.B. 8; 53 L.T. 589; 34 W.R. 53.—So also, where the qualifying property was described as "School Yard," "Bridge," "High Street," or "Jones's Cottages." *Minifie* v. *Banger*, 55 L.J. Q.B. 10; 53 L.T. 590.

(vi.) **Q. B. D.**—*Parliamentary and Municipal Registration Act*, **1878**, *s.* 28, *sub-s.* 2, *and Sched., Form I.*, 1, 2.—There were three lists of parliamentary voters for the Blockhouse in the borough of W., of which No. 1 alone was divided. H. gave a notice to the overseers, in which he objected to the names of certain persons being retained "in the Blockhouse list of persons, Division 1." *Held*, that the revising barrister had power to amend the notice by inserting the number of the list.—*Bollen* v. *Southall*, L.R. 15 Q.B.D. 462; 54 L.J. Q.B. 589; 34 W.R. 44.

(vii.) **Q. B. D.**—*Registration—Publication of Lists—Time—Registration Act*, 1885, *s.* 18, *Sched.* 2, *cl.* 42.—Non-publication of occupiers' and lodgers' lists until two or three days after the proper date: *Held*, not to invalidate the occupiers' or lodgers' claims.—*Wells* v. *Stanforth*, 55 L.J. Q.B. 12.

Partnership:—

(i.) **Ch. D.**—*Dissolution by Death—Power of Surviving Partner to Charge Assets of Firm.*—A surviving partner, after the dissolution of the partnership by the death of his co-partner, can charge the partnership assets to secure a debt due from the firm at the time of the dissolution. —*Re Clough; Bradford Commercial Joint Stock Banking Co.* v. *Cure*, 55 L.J. Ch. 77; 53 L.T. 716; 34 W.R. 96.

(ii.) **C. A.**—*Proof of Creditor against Estate of Deceased, whether bar to remedy against Surviving, Partner.*—Proof against the estate of a deceased partner is no bar to proceedings against a surviving partner.—*Re Hodgson; Beckett* v. *Ramsdale*, 34 W.R. 127.

And see Lien. Practice, p. 55, vi. Solicitor, p. 62, ii.

Patent.—*See* Practice, p. 53, iv.

Poor-Law:—

(iii.) **Q. B. D.**—*Settlement by Residence—Divided Parishes Act*, 1876, *s.* 34. —Three years, in the above section, means three consecutive years.—*Guardians of Dorchester Union* v. *Guardians of Weymouth Union*, L.R. 16 Q.B.D. 31.

Poor-Rate:—

(iv.) **C. A.**—43 *Eliz.*, *c.* 2—*Rector's Rate.*—A rector's rate upon houses, shops, warehouses, cellars and outhouses: *Held*, not rateable to the poor, not being in lieu of tithes.—*R.* v. *Christopherson*, L.R. 16 Q.B.D. 7; 34 W.R. 86.

(v.) **Q. B. D.**—*Public Health Act*, 1875, *s.* 256.—*Sufficient Cause for Non-payment.*—The respondents made a general district rate, based upon new valuation lists duly approved by the assessment committee. They subsequently reduced the net rateable value upon which the appellants were assessed; but the latter, being still dissatisfied with their assessment, appealed to the quarter sessions. Pending that appeal the respondents took out a summons under section 256 of the above Act, calling upon the appellants to show cause why they should not pay the rate. *Held*, that there was sufficient cause.—*Sheffield Waterworks Co.* v. *Mayor of Sheffield*, 34 W.R. 153.

(vi.) **Q. B. D.**—*Appeal*—27 *&* 28 *Vict.*, *c.* 39, *s.* 1.—Where a person rated to the poor has given notice of objection to the assessment committee and appealed to them against the valuation list, whereupon the committee have reduced his assessment, and the valuation list has been amended accordingly, but no supplemental list made, he can appeal to the quarter sessions against a rate based upon the amended list, without going a second time to the assessment committee.—*R.* v. *Justices of Denbighshire*, L.R. 15 Q.B.D. 451.

And see Act of Parliament, p. 29, i.

Power:—

(vii.) **Ch. D.**—*Contingent Exercise of Power of Appointment.*—A power to appoint to children, with limitations over in favour of them or other issue, will have been well exercised by an appointment, after the death of the children, to a grandchild for life, with remainder to his next-of-kin, if, at the time when such grandchild dies, his next-of-kin happen to be issue.—*Re Coulman; Munby* v. *Ross*, L.R. 30 Ch. D. 186; 55 L.J. Ch. 34; 53 L.T. 560.

And see Will, p. 68, iv.

Practice :—

(i.) **Ch. D.**—*Petition for Permanent Investment—R. S. C.*, 1883, *Ord.* 55, *r.* 2, *sub-r.* 7.—Notwithstanding the above rule, the Court will allow the costs of a petition, when that mode of proceeding is the cheaper and better course.—*Re Bethlehem and Bridewell Hospitals*, L.R. 30 Ch. D. 541; 54 L.J. Ch. 1143; 53 L.T. 558.

(ii.) **Ch. D.**—*Originating Summons—Appointment of New Trustees—Trustee Act*, 1855, *s.* 16—*Judicature Act*, 1884, *s.* 13.—The Court has no jurisdiction, on an originating summons not in an action, to appoint new trustees.—*Re Gill; Smith* v. *Gill*, 53 L.T. 623; 34 W.R. 134.

(iii.) **Q. B. D.**—*Writ of Prohibition issued out of Petty Bag Office—Power of Judge at Chambers—Judicature Act*, 1873, *s.* 39.—A judge at chambers has power to set aside a writ of prohibition issued out of the Petty Bag Office.—*Amstell* v. *Lesser*, 53 L.T. 759; 34 W.R. 230.

(iv.) **C. A.**—*Service out of the Jurisdiction—R. S. C.*, 1883, *Ord.* 11, *r.* 1 (*f*); *Ord.* 70, *r.* 2.—A writ endorsed with a claim for an injunction to restrain the defendant from sending libellous post cards, and for damages, having been issued, with the leave of the Court, for service in Dublin, and served, and the defendant having entered an appearance: Motion to set aside the writ for want of jurisdiction, dismissed, the defendant not having filed any affidavit that he never came to England.—*Tozier* v. *Hawkins*, L.R. 15 Q.B.D. 680 (affirming Q. B. D.: *ib.* 650); 34 W.R. 223.

(v.) **Q. B. D.**—*Substituted Service, where Defendant out of Jurisdiction—Ord.* 11; *Ord.* 6, *rr.* 1, 2.—The Court has jurisdiction to order substituted service within the jurisdiction of a copy of a writ of summons issued for service out of the jurisdiction.—*Ford* v. *Shephard*, 53 L.T. 564; 34 W.R. 63.

(vi.) **Q. B. D.**—*Service—Foreign Corporation—Ord.* 9, *r.* 8.—Service of a writ of summons upon an agent in London of a foreign company not having an office in this country, set aside.—*Nutter* v. *Les Messageries Maritimes de France*, 54 L.J. Q.B. 527.

(vii.) **Q. B. D.**—*Service on Foreigner out of Jurisdiction—Application for Receiver.*—There is no jurisdiction to grant leave to serve upon a foreign defendant, resident out of the jurisdiction, a summons calling upon him to attend on the application of the plaintiff for the appointment of a receiver.—*Weldon* v. *Gounod*, L.R. 15 Q.B.D. 622.

(viii.) **Q. B. D.**—*Proceedings in Default of Appearance—Service out of the Jurisdiction—Certificate in Lieu of Affidavit of Service—R. S. C.*, 1883, *Ord.* 13, *r.* 2.—The Court has no power to allow a certificate, instead of an affidavit, of service, out of the jurisdiction, of notice of a writ to be filed, even where by the foreign law the process-server cannot make the prescribed affidavit.—*Ford* v. *Miesche*, L.R. 16 Q.B.D. 57; 55 L.J. Q.B. 79; 53 L.T. 535; 34 W.R. 74.

(ix.) **Ch. D.**—*Infant Plaintiffs—Right of Testamentary Guardian to be Next Friend.*—Pending an action brought by infants, with the authority of their father, by a solicitor's clerk as their next friend, the father died. There was no allegation of misconduct against the solicitor's clerk. *Held*, that the testamentary guardian of the infants was entitled to be substituted upon the record as the next friend.—*Hutchinson* v. *Norwood*, 34 W.R. 214.

(x.) **C. A.**—*Security for Costs.*—An insolvent trustee in bankruptcy of an insolvent estate can sue without giving security for costs.—*Cowell* v. *Taylor*, L.R. 31 Ch.D. 34; 55 L.J. Ch. 92; 53 L.T. 483; 34 W.R. 24.

(i.) **C. A.**—*Payment into Court—Admission.*—Motion, in an administration action, that the defendant, a trustee, might be ordered to pay into Court money, part of the trust estate, which it was shown by affidavit that he had received. The defendant appeared to oppose the motion without having answered the affidavit or entered into any evidence. *Held*, that there was a sufficient admission by the defendant that the money was in his hands.—*Porrett* v. *White*, L.R. 31 Ch. D. 52; 55 L.J. Ch. 79; 53 L.T. 514; 34 W.R. 65.

(ii.) **Q. B. D.**—*Inspection—Deposit—R. S. C.*, 1883, *Ord.* 31, *r.* 26; *Ord.* 72, *r.* 2.—A plaintiff is entitled, without making a deposit for costs, to inspect a document, in the possession of the defendant, which is the common property of himself and the defendant, and of which the latter is a trustee for him.—*Brown* v. *Liell*, 55 L.J. Q.B. 73.

(iii.) **Q. B. D.**—*Discovery—Ord.* 31, *r.* 12.—"Any party," in the above rule, means "any opposing party." A defendant cannot obtain discovery of documents from his co-defendant.—*Brown* v. *Watkins*, 53 L.T. 726.

(iv.) **Ch. D.**—*Patent—Inspection of Process.*—Action for infringement of a patent for a process. Order made giving the defendants liberty to inspect the process of the plaintiffs.—*Germ Milling Co.* v. *Robinson*, 53 L.T. 696; 34 W.R. 194.

(v.) **Ch. D.**—*Affidavit Expenses of Production of Deponent for Cross-Examination before Trial.—R. S. C.*, 1883, *Ord.* 37, *r.* 22; *Ord.* 38, *r.* 28.—The expenses of the production of a witness for cross-examination before trial upon his affidavit must now be borne in the first instance by the party producing such witness.—*Mansel* v. *Clanricarde*, 54 L.J. Ch. 982; 53 L.T. 496.

(vi.) **Ch. D.**—*Amendment of Pleadings after Issue Joined—R. S. C.*, 1883, *Ord.* 28, *r.* 1.—The Court will grant leave to amend, upon terms, even at the last moment, if the application is made *bonâ fide*, and the granting of it will not work injustice to the other side.—*Corporation of Preston* v. *Fullwood Local Board* (*No.* 2), 34 W.R. 200.

(vii.) **Ch. D.**—*Amendment after Evidence Filed &c.*—*Ord.* 28, *r.* 1.—By his statement of claim, as originally delivered, the plaintiff claimed relief upon the footing of B. having been a domiciled Swiss. By amendment of his statement of claim he claimed alternative relief upon the footing of B. having been a domiciled Frenchman. By a further amendment of his statement of claim he abandoned his original ground of relief. He now applied for leave to amend once more by restoring in his statement of claim the claim for relief upon the footing of B. having been a domiciled Swiss. The pleadings had been closed, the evidence filed, the action set down for hearing, and the briefs delivered. Leave granted, upon the plaintiff paying the costs of the application and a sum into court to secure costs rendered nugatory by the amendment.—*Re Trufort; Trafford* v. *Blanc*, 53 L.T. 498; 54 W.R. 56.

(viii.) **Ch. D.**—*Leave to Amend—Joinder of Causes of Action—Claim for Recovery of Land—New Case—Delay—R. S. C.*, 1883, *Ord.* 18, *rr.* 1, 2.—The defendant in an action for the specific performance of an agreement to grant a lease of a piece of land to the plaintiff, and to build a house for him upon it, delivered a statement of defence admitting the agreement and averring his readiness to perform his part of it, and a counter-claim claiming money for work done under the agreement. The plaintiff replied, and the defendant delivered a rejoinder joining issue. Some months afterwards, when the action had been set down for trial, the defendant took out a summons for liberty to amend his statement of defence and counter-claim, and to join therewith a claim for the recovery of the land. Summons dismissed with costs.—*Clark* v. *Ray; Ray* v. *Clark*, L.R. 31 Ch. D. 68; 53 L.T. 485; 34 W.R. 69.

(i.) **Ch. D.**—*Trial by Jury—Judicature Act,* 1873, *s.* 34—*R. S. C.*, 1883, *Ord.* 36, *rr.* 3, 4, 6.—A party to an action which includes a material claim that must be tried in the Chancery Division is not entitled as of right to split the action and have a portion of it tried before a judge and jury.—*Sheppard* v. *Gilmore*, 53 L.T. 625 ; 34 W.R. 179.

(ii.) **Ch. D.**—*Trial by Jury—Ord.* 36, *r.* 6—*Ord.* 64, *r.* 7—*R. S. C., December,* 1885.—Motion for a jury in an action for an injunction and an account commenced in the Chancery Division. On the 11th of December, 1885, the parties had come to an arrangement upon the footing that the action was to be tried in the Chancery Division. Notice of trial had been given on the 12th of December, 1885. The notice of motion for a jury had been given on the 4th of January, 1886. Motion refused.—*Moore* v. *Deakin*, 34 W.R. 227.

(iii.) **C. A.**—*Place of Trial—R. S. C.*, 1883, *Ord.* 20, *r.* 5; *Ord.* 36, *rr.* 1, 1*a*, 34.—Action for an injunction to restrain infringement of a patent, and for damages. The writ was issued in the Chancery Division, and the action was assigned to Kay, J.; but the plaintiff, in his statement of claim, named Manchester as the place of trial, and the action came on for trial, in due course, at the Manchester Assizes. The judge at Manchester, on the ground of pressure of business, refused to try the action, and made an order remitting it for trial before Kay, J., in Middlesex. *Held*, that he ought to have tried the case or made it a remanet.—*Fairburn* v. *Household*, 53 L.T. 513.

(iv.) **C. A.**—*Hearing in Private.*—It being stated, on behalf of the plaintiff, on an appeal by the defendant against an injunction granted on a private hearing, restraining him from disclosing matters confided to him as solicitor, that a public hearing of the appeal would defeat the object of the action, and render success on the appeal valueless to the plaintiff: *Held*, that the Court had jurisdiction to hear the case in private without the consent of the defendant.—*Mellor* v. *Thomson*, L.R. 31 Ch. D. 55.

(v.) **C. A.**—*Evidence—Production of Documents—Privilege of Solicitor.*—A solicitor, in possession, on behalf of the trustees, of a marriage settlement, cannot, when subpœnaed as a witness and to produce documents, upon an inquiry whether the wife possesses separate estate, refuse, on the ground of professional privilege, to state the names of the trustees, or to produce the settlement.—*Bursill* v. *Tanner*, L.R. 16 Q.B.D. 1 ; 55 L.J. Q.B. 53 ; 53 L.T. 445 ; 34 W.R. 35.

(vi.) **Ch. D.**—*Specific Performance.*—Form of order, where a purchaser against whom specific performance has been decreed endeavours to avoid completion.—*Morgan* v. *Briscoe*, 34 W.R. 193.

(vii.) **Ch. D.**—*Undertaking of Married Woman—Married Women's Property Act*, 1882, *s.* 1.—An *interim* injunction having been granted on the undertaking of a married woman as to damages: *Held*, that her sole undertaking was sufficient.—*Re Prynne*, 53 L.T. 465.

(viii.) **Ch. D.**—*Payment out of Court—Small sums Payable to Infants.*—*Ordered*, that small sums of money, representing the shares of infants in a fund in Court, should be invested by the Paymaster-General in the infants' names in the Post Office Savings Bank.—*Elliott* v. *Elliott*, 54 L.J. Ch. 1142.

(ix.) **C. A.**—*Costs—Married Woman Plaintiff—Security—Married Women's Property Act*, 1882, *s.* 1 (2).—Decision of Ch. D. (*see ante*, p. 15, iii.) affirmed.—*Re Isaac ; Jacob* v. *Isaac*, L.R. 30 Ch.D. 418 ; 54 L.J. Ch. 1136 ; 53 L.T. 478.

(i.) **Q. B. D.** — *Costs — Refreshers — R. S. C.*, 1883, *Ord.* 65, *r.* 27, *sub-rr.* 30, 48.—The taxing-master has a discretion to allow refreshers to counsel on an argument before the Court of Appeal.—*Svendsen* v. *Wallace*, L.R. 16 Q.B.D. 27; 55 L.J. Q.B. 65; 53 L.T. 565; 34 W.R. 151.

(ii.) **Ch. D.**—*Costs—Refreshers—Powers of Taxing-master—Ord.* 65, *r.* 27, *sub-r.* 48.—The above sub-rule confers upon the taxing-master a discretion, under special circumstances, to disallow refresher fees.—*Smith* v. *Wills*, 53 L.T. 386; 34 W.R. 30.

(iii.) **Ch. D.**—*Setting aside Judgment in Default of Appearance at Trial—Time—R. S. C.*, 1883, *Ord.* 27, *r.* 15; *Ord.* 36, *r.* 33.—The Court cannot set aside a judgment obtained where one party did not appear at the trial, upon an application not made within six days after the trial.—*Walter (or Walker)* v. *James*, 53 L.T. 597; 34 W.R. 29.

(iv.) **C. A.**—*Effect of Consent of Parties to Rescission of Judgment.*—When at a trial the Court gives a judgment by the consent of the parties, such judgment cannot be set aside, except by the Court with full knowledge of the facts. Any party interested in the subject-matter of a judgment has a right to avail himself of it as being a good answer to a claim between the immediate parties.—*The Bellcairn*, L.R. 10 P.D. 161 (P.D.: 54 L.J. P.D. & A. 88); 53 L.T. 686; 34 W.R. 55.

(v.) **Ch. D.**—*Defence Struck Out for Refusal to Allow Inspection—Setting Aside Judgment—R. S. C.*, 1883, *Ord.* 31, *r.* 21; *Ord.* 27, *r.* 15.—The Court will not act upon Ord. 27, r. 15, when the defendant has wilfully and knowingly allowed judgment to go by default; at least, if there has been a long delay.—*Haigh* v. *Haigh*, 34 W.R. 120.

(vi.) **H. L.**—*Parties—Action against Firm—Appearance of One Partner—Execution against Another Partner.*—Decision of C. A. (see Vol. 9, p. 13, ii.) affirmed.—*Munster* v. *Cox*, L.R. 10 App. Cas. 680; 53 L.T. 474.

(vii.) **P. D.**—*Default of Payment into Court—Proceedings with a View to Attachment.*—A co-respondent having failed to comply with an order to pay damages into the registry within four days, there being no one to institute proceedings in default, the Court, upon motion for attachment, ordered the damages to be paid to the petitioner, he undertaking to pay them into Court.—*Gyte* v. *Gyte*, L.R. 10 P.D. 185; 34 W.R. 47.

(viii.) **C. A.**—*Appeal—Time—R. S. C.*, 1883, *Ord.* 58, *rr.* 1, 15.—An appeal is "brought," when the notice of appeal is served.—*Christopher* v. *Croll*, L.R. 15 Q.B.D. 66; 55 L.J. Q.B. 78; 53 L.T. 653; 34 W.R. 134.

(ix.) **Ch. D.**—*Appeal—Time—Ord.* 58, *r.* 15—*Order, Final or Interlocutory.*—Motion to vary an order made, more than 21 days before service of notice of the motion, by the judge in chambers, on a summons in an administration action. The order directed taxation of the costs of the parties and payment to certain creditors, and reserved liberty to any of the parties to apply in chambers with reference to certain outstanding personal estate. *Held*, that the order, though final as regards the rights of the creditors, was an interlocutory order in an action, and the motion, therefore, out of time.—*Re Lewis; Lewis* v. *Lewis*, 34 W.R. 40.

(x.) **Q. B. D.**—*Remitting Action to County Court—Counter-claim for Unliquidated Damages— County Courts Act*, 1856, *s.* 26.—There is no power to remit to the County Court an action in which there is a counterclaim for unliquidated damages.—*Mackay* v. *Banister*, 53 L.T. 567; 34 W.R. 121.

(xi.) **Q. B. D.**—*County Court—Appeal—Time.*—An application for a new trial was made to a County Court judge within two days of the original trial. After taking a fortnight to consider, he refused it. A rule *nisi*

for a new trial, obtained in the High Court within two days of such refusal: *Held*, out of time.—*Morris* v. *Lowe*, 34 W.R. 45.

And see Bankruptcy, p. 30, v. Company, p. 35, v.-vii.; p. 36, iii. Costs. Criminal Law, p. 38, ii., iii. Estoppel, p. 40, ii. Evidence, p. 40, iii.-v. Husband and Wife, p. 42, vi. Injunction, p. 42, x.; p. 43, i. Lunatic, p. 46, ii.-iv. Mandamus. Mortgage, p. 48, i. Parliament, p. 50, iv.-vii. Poor-rate, p. 51, v., vi. Railway, p. 57, iv. Ship, p. 61, vii.-ix. Solicitor, p. 62, iii., vii. Tort. Trustee, p. 64, iii.; 65, iii.

Prescription.—*See* Highway.

Principal and Agent:—

(i.) **C. A.**—*Fraud of Agent.*—D. and P., solicitors, obtained from the defendant, a client of theirs, £1,000, to be invested in a transfer of mortgage, which they told him that other clients of theirs, the plaintiffs, wished to make. They subsequently obtained from the plaintiffs a transfer, with a receipt endorsed, of a mortgage for the amount named, which the plaintiffs executed in the belief, induced by D. and P., that they were executing a reconveyance. The transfer and the title-deeds, which had been in the custody of D. and P., were handed by the latter to the defendant; and for five years D. and P. paid to the defendant interest upon the mortgage, as coming from the mortgagor, who all the while was paying interest to the agents of the plaintiffs. D. and P. misappropriated the £1,000. *Held*, that the plaintiffs had been guilty of such negligence as raised an equity against them to prevent them from enforcing a vendor's lien against the defendant.—*Gordon* v. *James*, L.R. 30 Ch. D. 249; 53 L.T. 641; 34 W.R. 217.

(ii.) **H. L.**—*Advance by Broker to Agent for Sale—Antecedent Debt—Factors Act*, 5 & 6 *Vict.*, c. 39, ss. 3, 7.—Decision of C. A. (*see* Vol. 8, p. 111, 1) affirmed.—The appellants, merchants in Singapore, employed M., in London, as agent to sell, without authority to pledge, cargoes which they consigned to him. M. pledged pepper, consigned to him by the appellants, with the respondents, London brokers, to secure an advance protected by the Factors Acts. The pepper had been sold for M. by the respondents, but it had not been delivered to the purchaser, nor had the balance of the price been paid, when M. died, insolvent and largely indebted to the respondents on a general account. Before receiving the balance of the price, and while still in possession of the pepper, the respondents had notice that the appellants claimed the pepper and the balance. *Held*, that, after repayment of the respondents' advance, the surplus belonged to the appellants.—*Kaltenbach* v. *Lewis*, L.R. 10 App. Cas. 617; 55 L.J. Q.B. 58.

And see Criminal law, p. 38, ii.

Priority.—*See* Mortgage, p. 47, iii., iv.

Probate:—

(iii.) **P. D.**—*Default by Administratrix—Attachment—Debtors Act*, 1869, *s.* 3, *sub-s.* 4.—Attachment granted, at the instance of an executrix, against a person who had obtained letters of administration on a suggestion of intestacy, and had disobeyed an order to pay to an administrator *pendente lite* appointed by the Court £100 which she had received as administratrix on a policy upon the life of the deceased.—*Tinnuchi* v. *Smart*, L. R. 10 P.D. 184; 54 L.J. P.D. & A. 92; 34 W.R. 46.

Prohibition.—*See* Practice, p. 52, iii.

Public Health Act, 1875:—

(iv.) **C. A.**—*Sections* 155, 158; *Sched. I. rr.* 2, 9; *Sched. II., Part I., r.* 65; *Part II., r.* 2.—Seven members of a local board, constituted under the

P. H. A., 1875, and consisting of nine persons, having resigned, the remaining two, being one less than a quorum, elected three new members, and the five elected four more. The new board prescribed a building-line. *Held*, that the building-line was effectually prescribed.—Where a building is taken down to make room for another, a building-line may be prescribed for any portion of the new building which has not been commenced, unless some portion which has been commenced involves, as a matter of construction, a projection beyond such line.—*Newhaven Local Board* v. *Newhaven Board School*, L.R. 30 Ch. D. 350; 53 L.T. 571; 34 W.R. 172.

(i.) **Q. B. D.**—*Notice (and Order) to Abate Nuisance—ss.* 94, 96.—A notice under section 94, requiring a person to abate a nuisance and to do any works necessary for the purpose, must specify the works to be done. So also an order under section 96.—*R.* v. *Wheatley*, L.R. 16 Q.B.D. 34.

And see Local Government, p. 45, viii. Poor Rate, p. 51, v.

Railway :—

(ii.) **Ch. D.**—*Notice to take Part of Premises—Compensation.*—A clause in the special Act of a railway company, enabling them, notwithstanding section 92 of the Lands Clauses Act, 1845, to take part only of certain properties, without taking the whole, if such part could, in the judgment of the jury &c. determining the compensation under the L.C.A., be severed without material damage to the rest: *Held*, not to mean that the company would be bound, after giving notice to treat for part, to take the whole, if the jury should be against them upon the question of severance.—*Morrison* v. *Great Eastern Railway Co.*, 53 L.T. 384.

(iii.) **Ch. D.**—*Rights of Owner of Mineral Estate Intersected by Railway—Railways Clauses Consolidation Act*, 1845, *ss.* 77—82.—The owner of mines on both sides of a railway is not entitled to cross the line in order to work such mines.—*Midland Railway Co.* v. *Miles*, L.R. 30 Ch. D. 635; 53 L.T. 381; 34 W.R. 136.

(iv.) **Q. B. D.**—*Power of Commissioners to State Special Case—Terminal Charges for Stations &c.*—The Railway Commissioners have power to state a special case with reference to a decision by them under sec. 15 of the Regulation of Railways Act, 1873.—Providing station accommodation and sidings for goods traffic, and the weighing (when not done at the request of the consignor, owner or consignee), checking, watching and labelling of goods, fall within the category of services "incidental to the duty or business of a carrier," and not of expenses "incidental to conveyance," in section 51 of 26 & 27 Vict., c. 218; and, therefore, the L. B. & S. C. R. Co. can make a reasonable charge, in respect of such matters, beyond the maximum rates limited by that section.—*Hall* v. *London, Brighton and South Coast Railway Co.*, L.R. 15 Q.B.D. 505; 53 L.T. 345.

(v.) **Q. B. D.**—*Luggage left in Charge of Porter.*—A railway company is not responsible for the loss of luggage left on their platform with a porter for custody and not for transit.—*Bunch* v. *Great Western Railway Co.*, 34 W.R. 74; *Welch* v. *London and North-Western Railway Co.*, *ib.* 167.

And see Act of Parliament, p. 29, i.

Railways Clauses Act.—*See* Sewer, p. 60, vii.

Rate :—

(vi.) **H. L.**—*Church Rate—Rate Partly Applicable to Ecclesiastical Purposes—Local Acts.*—Decision of C. A. (50 L.T. 65) affirmed.—*Vestry of St. Matthew, Bethnal Green,* v. *Perkins*, 53 L.T. 634.

And see Poor-rate, p. 51, v. Water-rate.

Res Judicata:—*See* Estoppel.

Revenue:—

(i.) **Q. B. D.**—*Excise Licence—Duty on Groom*—33 & 34 *Vict.*, *c.* 14, *s.* 19—39 *Vict.*, *c.* 16, *s.* 5.—A man-servant employed substantially as a farm labourer is not a subject of the duty upon male servants, although he be also his master's groom.—*Yelland* v. *Winter*, 34 W.R. 121.

(ii.) **H. L.**—*Income Tax—Insurance Company—Bonuses to Participating Policy Holders—"Annual Profits or Gains"*—5 & 6 *Vict.*, *c.* 35, *s.* 54.—*Held*, reversing the decision of C. A. (*see* Vol. **10**, p. 50, v.), that the sums payable to the participating policy-holders were profits or gains of the company assessable to the income-tax.—*Last* v. *London Assurance Corporation*, L.R. 10 App. Cas. 438; 53 L.T. 634.

Rule against Perpetuities.—*See* Will, p. 68, iv.

Rule in Shelley's Case.—*See* Will, p. 66, v.

Sale of Goods:—

(iii.) **Q. B. D.**—*Stoppage in Transitu.*—The seller of goods does not lose his right to stop them *in transitu* by the mere fact that the bill of lading under which they are shipped makes them deliverable to the buyer or his assigns.—*Brindley* v. *Cilgwyn Slate Co.*, 55 L.J. Q.B. 67.

(iv.) **Q. B. D.**—*Implied Warranty—Chain Cable*—27 & 28 *Vict.*, *c.* 27; 34 & 35 *Vict.*, *c.* 101; 37 & 38 *Vict.*, *c.* 51.—In every contract for the sale of a chain cable, whether for use in a British ship or not, there is an implied warranty that it has been tested and stamped in accordance with the Chain Cables and Anchors Acts.—*Hall* v. *Billingham*, 34 W.R. 122.

Satisfaction:—

(v.) **Ch. D.**—*Legacy to Child—Subsequent Advancement.*—A gift of farming-stock may be a satisfaction of a legacy.—*Re Turner; Turner* v. *Turner*, 53 L.T. 379.

Scotch Law:—

(vi.) **H. L.**—*Jurisdiction—Treaty of Union*, 1706, *Art.* 19—*Forum Conveniens.*—A decerniture of a Scotch Court that the trustees of a trust disposition and settlement made by a domiciled Scotch testator leaving personalty in England are to be treated as wrong-doers in Scotland, and as violating their trust, if they submit to and obey, in England, the lawful decree of an English Court, is an excess of jurisdiction; but, both trust property and trustees being in Scotland, an interlocutor sequestering the estate, appointing a judicial factor and provisionally interdicting the trustees from removing any part of the estate from Scotland, is undoubtedly within the jurisdiction of a Scotch Court, although a decree for administration has previously been made by an English Court against the same trustees as to the same property.—*Ewing* v. *Orr Ewing*, L.R. 10 App. Cas. 453.

(vii.) **H. L.**—*Marriage—Death-bed Doctrine—Evidence.*—The doctrine of death-bed did not apply to marriages, but only to instruments executed to the prejudice of the heir *alioquin successurus.*—When the fact of a *bonâ fide* marriage is established, the law presumes, until the contrary is shown, that all that was requisite to give it validity was done.—The statement of a deceased person in relation to facts which must presumably have been within his personal knowledge, and as to which he might have been examined as a witness, may be received as secondary evidence through the medium of *writing*: a memorandum, in a church

register, by a rector chosen in 1777, of facts suggesting that an assistant from 1764 to 1774 kept no register of marriages, admitted to explain the absence from the register of any entry of a particular marriage alleged to have taken place in 1772.—After the lapse of a very long time and the death of all parties concerned, the contemporaneous records of a corporation are good evidence of its acts: an unsigned minute, dated 1749, in a minute-book of the S. P. G., the minutes of whose meetings were not read and confirmed in those days, admitted to prove the identity of a clergyman.—*The Lauderdale Peerage*, L.R. 10 App. Cas. 692.

(i.) **H. L.**—*Evidence—Hearsay—Statements Post Litem Motam.*—Hearsay of deceased persons as to facts of which they could not have personal knowledge is not receivable in evidence. So also a statement of a person pursuing a claim to an estate or title of nobility as to what was said to him, by a person connected with the family, in the course of such pursuit.—*The Lovat Peerage*, L.R. 10 App. Cas. 763.

(ii.) **H. L.**—*Disposition of Lands—Reservation of "Liberty of Working" the Minerals.*—Where a grantor of lands, who is himself infeft of the whole property in the soil and minerals, reserves to himself and his heirs liberty of working the minerals, that is *primâ facie* a reservation of the antecedent property in the minerals.—*Duke of Hamilton* v. *Dunlop*, L.R. 10 App. Cas. 813.

(iii.) **H. L.**—*Superior and Vassal—Irritancy ob non Solutum Canonem—Sub-feu.*—The remedy which a superior has in respect of an irritancy under Scotch Statute 1597, c. 250, or a conventional irritancy of the same import, is a right to annul the charter and infeftment of his feuar and all that has followed theron, to the effect of resuming the full beneficial possession of the lands feued, unless the arrears of his feu duty are at once paid to him, either by the feuar himself or by some one deriving such right from the feuar as gives him a legitimate interest to purge.—*Sandeman* v. *Scottish Property Society*, L.R. 10 App. Cas. 553.

Settlement:—

(iv.) **Ch. D.**—*Construction—Limitation to Right Heirs of Wife's Deceased Mother.*—Real estate was limited by a marriage settlement, executed in 1810, to the use of the husband for life, with remainder to the use of the wife for life, with remainder to the use of the children of the marriage, and with an ultimate remainder to the use of the rights heirs of J. W. deceased (the mother of the wife). Part of the estate had descended to the wife as heiress-at-law of her mother, and the remainder of it had descended to her as heiress-at-law of her maternal great-uncle. *Held*, that the descent was not broken by the settlement. —*Moore* v. *Simkin*, L.R. 31 Ch. D. 95.

(v.) **Ch. D.**—*Ambiguity.*—Covenant (without the words "It is hereby agreed"), by the husband alone, in the operative part of a marriage settlement executed by the wife, that he and the wife would settle her after-acquired property, and, until doing so, hold it upon the trusts of the settlement: *Held*, sufficiently ambiguous for the Court to look at the recitals to see whether it was intended that the wife's after-acquired separate property should be bound by the covenant.—*Re De Ros's trust; Hardwicke* v. *Wilmot*, L.R. 31 Ch. D. 81; 55 L.J. Ch. 73; 53 L.T. 524; 34 W.R. 36.

(vi.) **Ch. D.**—*Covenant to Settle After-acquired Property—Contingent Chose in Action.*—By her marriage settlement, F. settled a sum of £10,000 and covenanted to settle her after-acquired property. She had received the £10,000 before her marriage, being at the time *sui juris*, as her share of residue under a will, and had executed a release to the

executors of the will. After her marriage she discovered that she ought to have received £15,000 as her share of residue under the will, and had the release set aside by the Court. *Held*, that both the additional £5,000 and the arrears of income which she became entitled to receive upon the release being set aside were bound by the covenant to settle after-acquired property.—*Re Garnett; Robinson* v. *Gandy*, 53 L.T. 756.

(i.) **C. A.**—*Tenant for Life and Remainder-man—Royalties reserved upon Mining Lease—Settled Land Act*, 1882, *ss.* 2 (*sub-ss.* 1, 5, 10, ii., iv.), 11, 63.—A mining lease having been granted of lands made personalty under a settlement: *Held*, that the equitable tenant for life was impeachable for waste.—*Re Ridge; Hellard* v. *Moody*, 34 W.R. 159.

(ii.) **Ch. D**—*Tenant for Life and Remainder-man—Apportionment—Proceeds of Sale of Contingent Reversionary Interest.*—To divide the proceeds of a reversion between tenant for life and remainder-man, you must take the sum which, with compound interest from the date of the creation of the reversion, would have produced those proceeds, and give that sum to the remainder-man and the rest of the proceeds to the tenant for life.—*Re Hobson; Walker* v. *Appach*, 53 L.T. 627; 34 W.R. 70.

(iii.) **C. A.**—*Tenant for Life—Limited Owner.*—Decision of Ch. D. (*see* Vol. **10**, p. 85, iv.) affirmed.—*Re* (*Duke of Buccleuch's*) *Clitheroe estate*, 53 L.T. 733; 34 W.R. 169.

(iv.) **C. A.**—*Married Woman—Separate Property—Restraint on Anticipation—Election.*—Decision of Ch. D. (*see* Vol. **10**, p. 77, iv.) reversed.—*Re Vardon's trusts*, 34 W.R. 185.

(v.) **C. A.**—*Covenant Satisfied after Death—Succession Duty.*—Decision of Ch. D. (*see* Vol. **10**, p. 117, iv.) affirmed.—*Re Higgins; Day* v. *Turnell*, 34 W.R. 81.

And see Bankruptcy, p. 31, i., ii. Deed. Husband and Wife, p. 42, iv.

Sewer:—

(vi.) **Ch. D.**—*Commissioners of Sewers—Notice to Treat—Negotiations—Subsequent Objection to Notice—Estoppel.*—If an owner of lands, having received from a public body, acting under their powers of compulsory purchase, a notice to treat, negotiates on the basis of the notice, he is estopped from afterwards denying its validity.—*Lynch* v. *Commissioners of Sewers of the City of London*, 34 W.R. 226.

(vii.) **C. A.**—*Right of Access—Lands Clauses Consolidation Act*, 1845, *s.* 68—*Railways Clauses Consolidation Act*, 1845, *s.* 6.—An Act of Parliament, which gave to the plaintiffs a right to make a certain sewer and imposed upon them the duty of keeping such sewer in repair, said nothing as to their access to the sewer for the purpose of performing such duty. *Held*, that no more right of access was to be implied than was reasonably necessary for that purpose.—*Mayor of Birkenhead* v. *L. & N. W. Ry. Co.*, L.R. 15 Q.B.D. 572; 55 L.J. Q.B. 48.

Sexton.—*See* Ecclesiastical Law, p. 39, iv.

Ship:—

(viii.) **C. A.**—*Charter-Party—Construction.*—Under a charter-party the charterers were entitled to appoint the master and to give the sailing orders; the owners were to maintain the master and the crew; in the event of the charterers being dissatisfied with the master's conduct, the owners were to hold an investigation and, if necessary, to make a change in the appointment. *Held*, that the master was the owners' servant, and entitled to maintain an action *in rem* against them for wages and disbursements.—*The Beeswing*, 53 L.T. 554.

(i.) **C. A.**—*Charter-Party—"Port."*—The word "port" in a charter-party does not necessarily mean port as defined for revenue or pilotage purposes.—*Sailing-Ship Garston Co.* v. *Hickie*, L.R. 15 Q.B.D. 580.

(ii.) **C. A.**—*Demurrage—Usual Place of Discharge.*—Decision at N. P. (*see* Vol. 10, p. 79, iii.) affirmed.—*Nielsen* v. *Wait*, L.R. 16 Q.B.D. 67; 34 W.R. 33.

(iii.) **P. D.**—*Duty of Owner of Damaged Cargo, where Shipowner refuses to take Fresh Cargo except upon Fresh Terms—Measure of Damages.*—Where cargo has been damaged so that it has to be unloaded, and the shipowner refuses to take a fresh cargo except upon fresh terms as to freight &c., it is the duty of the owner of the damaged cargo, before re-shipping it, to inquire what those terms are, in order that he may be able to form a judgment whether the benefit to be derived from shipping a fresh cargo will not more than compensate for the increased freight, and so possibly to diminish the loss for whomsoever it may concern.—Coal having been damaged under circumstances giving rise to a claim in damages: *Held*, that the question was, to what extent the heating power of the coal had been reduced.—*The Blenheim*, L.R. 10 P.D. 167; 54 L.J. P.D. & A. 81; 34 W.R. 154.

(iv.) **C. A.**—*Insurance of Chartered Freight—Time Policy—Duration of Risk.*—Decision of Q. B. D. (*see* Vol. 10, p. 78, vi.) affirmed.—*Hough* v. *Head*, 55 L.J. Q.B. 43; 34 W.R. 160.

(v.) **P. D.**—*Salvage—Success.*—The *H.*, after taking the *C.* in tow at her request, left her in a position of considerably greater danger than that in which she was when first taken in tow. *Held*, that the *H.* was not entitled to salvage.—*The Cheerful*, L.R. 11 P.D. 3.

(vi.) **Ch. D.**—*Seamen's Lien for Wages—Foreign-going Ship—Merchant Shipping Act*, 1854, *s.* 167.—The master of a ship chartered for a foreign voyage hired certain seamen to fit her for sea and proceed upon the voyage in her. The contract of hiring was not in writing. The voyage did not take place. Owing to neither the owners nor the charterers providing the master with funds for the purpose, no wages were paid to the seamen. *Held*, that the seamen were entitled to a lien upon the ship for their wages earned in fitting her out.—*Re Great Eastern SS. Co.*; *Williams & others claimants*, 53 L.T. 594.

(vii.) **C. A.**—*Lis Alibi Pendens.*—An action *in rem* having been instituted in a Dutch Admiralty Court by the owners of the German vessel *J.* against the Danish vessel *C.* in respect of a collision on the high seas, an agreement was come to by which the owners of the *C.* purchased the release of their vessel from the claims of the owners of the *J.* *Held*, that the subsequent institution of an action *in rem* by the owners of the *J.* against the *C.* in an English Admiralty Court was against good faith.—*The Christiansborg*, L.R. 10 P.D. 141; 54 L.J. P.D. & A. 84; 53 L.T. 612.

(viii.) **C. A.**—*Trial without Jury—R. S. C.*, 1883, *Ord.* 36, *rr.* 4, 6, 7*a.*—A party in an action *in rem* for disbursements in the Admiralty Court cannot insist as of right on having a jury. Upon an application under Ord. 36, r. 7a, the burden of proof lies on the applicant to show why he should have a jury.—*The Temple Bar*, L.R. 11 P.D. 6; 34 W.R. 68.

(ix.) **P. D.**—*Sale of Foreign Ship—R. S. C.*, 1883, *Ord.* 50, *r.* 2—*Action in rem for Collision.*—Sale of foreign ship ordered, on the report of the marshal that it was desirable that she should be sold, subject to an affidavit being filed verifying the cause of action and stating that no appearance had been entered.—*The Hercules*, L.R. 11 P.D. 10.

And see Evidence, p. 40, v. Insurance, p. 43, iv. Landlord and Tenant, p. 44, iv. Practice, p. 55, iv. Sale of Goods, p. 58, iv.

Solicitor:—

(i.) **Q. B. D.**—*Certificate—6 & 7 Vict., c. 73—40 & 41 Vict., c. 25.*—A solicitor who had ceased to take out his certificate for some years before the passing of 40 & 41 Vict., c. 25: *Held*, not entitled to a certificate, except under an order of the Master of the Rolls.—*Re Chaffers; e. p. the Incorporated Law Society*, L.R. 15 Q.B.D. 467.

(ii.) **Ch. D.**—*Partnership—Dissolution—Right to Name.*—A firm of solicitors consisted of, and was styled, Chappell, Son & Griffith. Chappell, the father, died, and the goodwill of the business became vested in Chappell, the son, and Griffith. After continuing to carry on the business under the old style for some time, they agreed to dissolve partnership. The agreement for dissolution contained no reference to the goodwill. Chappell continued to carry on business as a solicitor, at the old place, under the style of Chappell & Son; and Griffith continued to carry on business as a solicitor, a few doors off, under the style of Chappell & Griffith. Motion by Chappell for an *interim* injunction to restrain Griffith from so carrying on business, dismissed.—*Chappell* v. *Griffith*, 53 L.T. 459.

(iii.) **C. A.**—*Bill of Costs—Condition—Withdrawal—Taxation—Practice—Solicitors Act*, 1843, *s.* 37.—Although a solicitor may deliver a bill conditionally, nevertheless, the condition must be a fair, and not a catching, one. A client who disputes a solicitor's right to withdraw his bill should present a petition raising the point, and not obtain a common order for taxation.—*Re Thompson*, L.R. 30 Ch. D. 441; 53 L.T. 479; 34 W.R. 112.

(iv.) **Ch. D.**—*Country Solicitor and London Agent—Costs—Taxation.*—London agents charged the country solicitor with fees to counsel which had not been paid, and which the country solicitor had not supplied them with funds to pay. *Held*, that, as the London agent, and not the country solicitor, was responsible to counsel for the fees, that was not a sufficient circumstance to justify a taxation at the instance of the country solicitor.—*Re Nelson*, L.R. 30 Ch. D. 1.

(v.) **Ch. D.**—*Discharge of Solicitor's Lien.*—The Court has jurisdiction to order a solicitor who claims a lien for costs upon the papers of a late client to deliver the papers to the latter upon being secured by payment into Court of a sum sufficient to cover the costs and the expenses of taxation.—*Re Galland*, 34 W.R. 58. (*See* also report of same case in C. A., *ib.* 158.)

(vi.) **Ch. D.**—*Negligence—Sale by the Court—Omission to procure Investment of Purchase-money—Chancery Funds Rules*, 1874, *r.* 37.—Where it is the duty of the solicitor for the party having the conduct of a sale to see to the investment of the purchase-money, and he omits to do so, he is liable for the loss occasioned to another party by the non-investment.—*Batten* v. *Wedgwood Coal and Iron Co.*, 34 W.R. 228.

(vii.) **Ch. D.**—*Striking Name off Roll—Practice.*—A solicitor may be struck off the roll for misconduct in relation to a loan transaction with a client; and the Court has jurisdiction to strike off his name, or to direct an account against him, on a summary application.—*Re Strong (a solicitor)*, 53 L.T. 694.

And see Bankruptcy, p. 31, v. Lien. Lunatic, p. 46, ii. Practice, p. 54, v.

Stockbroker.—*See* Bankruptcy, p. 31, iii.

Stoppage in Transitu.—*See* Sale of Goods, p. 58, iii.

Street.—*See* Local Government, p. 45, v., viii.

Succession Duty.—*See* Settlement, p. 60, v.

Surety.—*See* Company, p. 34, v.; p. 36, iv. Limitation of Actions.

Title to Goods:—

(i.) **Q. B. D.**—*Right of Thief to Goods Purchased with Proceeds of Theft.*—A thief who has purchased goods with money the proceeds of his theft cannot maintain an action for detention or conversion of such goods against the person whom he robbed of the money.—*Cattley* v. *Lowndes*, 34 W.R. 139.

And see Bill of Sale, p. 33, i.

Tort:—

(ii.) **Q. B. D.**—*Tort Amounting to Felony—Action Before Prosecution.*—A parent or master can sue for loss of services occasioned by a felony, although no prosecution has been instituted.—*Appleby* v. *Franklin*, 34 W.R. 234.

Trade-Mark:—

(iii.) **Ch. D.**—*Registration—Old Mark—Similarity—Trade-marks Registration Act*, 1875.—A trade-mark used before the T. R. A., 1875, is an old mark only in respect of goods in connection with which it was used.—Upon the question whether a trade-mark is so similar to a mark already upon the register that it ought not to be registered, the Court will have regard to the probable results of the use of the two marks in practice. If the new mark would be likely, when worn, to be mistaken for the old one, the Court will refuse registration.—*Re Lyndon's Application*, 54 L.J. Ch. 972; *re Rosing's application*, *ib.* 975.

(iv.) **Ch. D.**—*Trade-marks Registration Act*, 1875, *s.* 10.—*Distinctive Words—User.*—The words "Excelsior Spring Mattress" were registered as a trade-mark under the T. R. A., 1875. Before the passing of that Act the applicants had used the word "Excelsior" on plates, bearing a device, which were affixed to mattresses of their manufacture; had stamped such mattresses with that word; and had used, in obtaining orders, a photograph of a mattress bearing a label with the words "Excelsior spring mattress" upon it. *Held*, that there was sufficient evidence of user to justify the registration.—*Re Chorlton and Dugdale's trade-mark*, 53 L.T. 337; 34 W.R. 60.

(v.) **C. A.**—*Registration for Entire Class—Five Years' Registration—User for part of class only—Infringement—Rectification of Register—Trade-marks Registration Act*, 1875, *ss.* 2—5, 10; *Amendment Act*, 1876, *s.* 1.—The plaintiff, assignee of a galvanized iron sheet business, and of a trade-mark consisting of "Neptune" and a figure of Neptune holding a trident, registered in 1878, under the Act of 1875, for goods in class 5, viz., "unwrought and partly wrought metals used in manufacture"—of which trade-mark he was also registered proprietor—sold, as his assignor had done, galvanized iron sheets only. The defendant, as agent for F. & G., sold steel and iron wire under a trade-mark consisting of a trident between the letters F. & G., with the word Neptune underneath, registered in 1880, for steel and iron wire, in class 5. In an action brought by the plaintiff in 1884 to restrain the defendant from using the word Neptune in connection with the sale of galvanized wire or other galvanized steel or iron: *Held*, that the plaintiff was not entitled to an injunction.—Upon summons by the defendant to rectify the register by limiting the registration of the plaintiff's trade-mark: *Held*, that such registration ought to be limited to galvanized iron sheets.—*Edwards* v. *Dennis*; *re Edwards' trade-mark*, L.R. 30 Ch. D. 454.

(i.) **Ch. D.**—*Registration—Time—Patents, Designs and Trade-marks Act, 1883, ss. 63, 113; s. 90; s. 74—Words common to Trade—Words calculated to Deceive.*—Section 63 of the P. D. & T. Act, 1883, applies to applications pending at the time when the Act came into operation.—An application to register a trade-mark was made in 1879; the actual registration was only effected in 1885. The Court ordered the register to be varied by inserting an entry that the five years mentioned in the Act should only run from the date of such entry.—Although an applicant for entry of a " common particular" have not disclaimed in his application any right to the exclusive use of such particular, the Court will not necessarily expunge his trade-mark from the register; but it will not let it stand without a disclaimer as to the common particular being added. A trade-mark on the register included a combination of two words. The combination of the two words had not, but each of the words separately had, been common to the trade before their user in the trade-mark. *Held*, that a disclaimer of any right to the exclusive use of either of the words by itself must be entered on the register.—*Re Hayward's trade-marks*, 54 L.J. Ch. 1003; 53 L.T. 487.

Trade-name.—*See* Injunction, p. 42, x.

Trust.—*See* Will, p. 67, iii.

Trustee:—

(ii.) **C. A.**—*Transfer of Stock into Joint Names—Intention to Benefit—Right to Retransfer.*—Decision of Ch. D. (*see* Vol. **10**, p. 54, vi.) affirmed.—*Standing* v. *Bowring*, 34 W.R. 204.

(iii.) **Ch. D.**—*Right to follow Trust Funds—Plea of Purchaser without Notice.*—The plea of purchaser for valuable consideration without notice is sufficiently raised by allegations in the statement of defence of facts establishing that plea.—A. and C. were trustees of the X. estate; B. and C. trustees of the Y. estate. C., being indebted to the Y. estate, purchased, to satisfy the claim, N. stock with the proceeds of M. stock, part of the X. trust property, which had stood in his name alone with the consent of A., and which he had sold with the knowledge of A., who, after being told by C. that the latter intended to invest the money upon mortgage, had made no further inquiries and taken no steps to secure the proper investment of the money. The complete legal title to the N. stock became vested by the death of C. in B. *Held*, that A. was not entitled to have that stock transferred to him.—*Taylor* v. *Blacklock*, 53 L.T. 753; 34 W.R. 175.

(iv.) **Ch. D.**—*New Trustee—Vesting Order—Practice—Conveyancing Act, 1881, s. 34, sub-s. 3.*—The persons having power to appoint new trustees of a marriage settlement, viz., the husband and wife, appointed, under their power, a new trustee in the place of a trustee who had absconded. The latter refused to execute transfers of the property, which consisted of policies of insurance and mortgages. Upon the petition, under the Trustee Acts, 1850 and 1852, of the husband, wife and continuing trustee for a vesting order: The Court directed that the petition should be amended by adding the name of the new trustee as a co-petitioner.—*Re Keeley's Trusts*, 53 L.T. 487.

(v.) **Ch. D.**—*Trustee Act, 1850—Covenant to Surrender Copyholds to Uses of Marriage Settlement—Vesting Order.*—By a marriage settlement the wife covenanted to surrender copyholds to the uses of the settlement. She died without having performed the covenant; whereupon the copyholds descended to the youngest son of the marriage, as her customary heir. Upon the petition of the husband, the other children of the marriage,

and the trustee: The Court made an order vesting the copyholds, without any surrender or admittance, in the trustee upon the trusts of the settlement for all the interest of the customary heir.—*Re Bradley's settled estate*, 34 W.R. 148.

(i.) **Ch. D.**—*Refusal of Trustee to Convey—Trustee Extension Act*, **1852**, *s.* **2.**—The Court has jurisdiction, under the above section, to vest land in Ireland in a person entitled to require a conveyance; and that, although the trustee lives in Ireland.—*Re Steele; Gould* v. *Brennan*, 53 L.T. 716.

(ii.) **C. A.**—*Infant Trustee—Inquiry.*—Where a person has acted as trustee while an infant, an inquiry may be directed as to his dealings with the trust property before he came of age.—*Re Garnes; Garnes* v. *Aplin*, 34 W.R. 127.

(iii.) **C. A.**—*Lunatic Trustee.*—One of three trustees having become lunatic, the Court, it appearing that the trust was at an end and the fund immediately distributable, made an order vesting the trust property in his co-trustees alone.—*Re Martyn*, 54 L.J. Ch. 1016.

And see Building Society, p. 33, iii. Lunatic, p. 46, iv. **Mistake.** Practice, p. 52, ii. Vendor and Purchaser, p. 65, iv.

Vendor and Purchaser:—

(iv.) **Ch. D.**—*Sale by Trustees—Depreciatory Condition.*—Trustees, selling leaseholds in lots by auction, employed a condition that no objection should be made that any lease was an underlease, or that the premises were held under the same lease with other property, or that the same were liable to superior rents &c. The lots were held under original leases, and no other property was held under the same lease as any of the lots. *Held*, a depreciatory condition.—*Re Rayner's Trustees & Greenaway*, 53 L.T. 495.

(v.) **Ch. D.**—*Disused Burial Ground—Conditions.*—By a local Act, passed in 1883, a piece of land, being a disused burial ground, was vested in trustees, with power to sell or let on building or other lease. The trustees contracted in 1885 to sell it for building purposes. One of the conditions of sale provided that the title should commence with the local Act, and another stated that, notwithstanding section 3 of the Disused Burial Grounds Act, 1884, the vendors believed that they were entitled, by virtue of section 5 of that Act, to sell the property as building land. Upon summons by the vendors under the Vendor and Purchaser Act, 1874: *Held* (1), that the purchasers were not precluded by the condition from making objections to the title; (2) that the vendors had not shown a good title.—*Re Trustees of St. Saviour's Rectory, Southwark*, 34 W.R. 224.

(vi.) **C. A.**—*Condition as to Rescission.*—Under a condition of sale providing that, "if the purchaser shall insist on any objection or requisition, as to the title, or evidence of title, or otherwise, which the vendor shall consider himself unable, or, on the ground of expense, or for any other reason, shall be unwilling to remove or comply with, the vendor may by notice in writing at any time annul the sale," the vendor is not bound, either, before rescinding, to inform the purchaser that he is about to rescind, or, when rescinding, to state his reason for doing so.—*Re Glenton to Haden*, 53 L.T. 434.

(vii.) **C. A.**—*Condition as to Interest upon Purchase-money*—A vendor who by going abroad incapacitates himself from completing upon the stipulated day is guilty of wilful default within the meaning of the ordinary condition as to payment of interest upon the purchase-money. So also, if he refuses to do what is reasonably necessary to procure execution of the conveyance in time by mortgagees, and delay ensues.—*Re Young and Harston*, 34 W.R. 84.

(i.) **Ch. D.** — *Specific Performance — Undisclosed Personal Covenant of Vendors with Adjoining Owner.*—Action for the specific performance of a contract to purchase a freehold house and land. Before completion the purchaser discovered that upon a previous sale of an adjoining freehold property for use as a convalescent hospital the vendor had covenanted not to take any proceedings for the purpose of preventing that property from being so used. *Held*, that the purchaser was not entitled to rescission of the contract or to a return of his deposit.—*Groves* v. *Loomes*, 55 L.J. Ch. 52; 53 L.T. 592; 34 W.R. 94.

And see Practice, p. 54, vi.

Water Rate :—

(ii.) **Q. B. D.**—*Jurisdiction of Justices to Determine Dispute as to Annual Value on Proceedings to Enforce Rate—Waterworks Clauses Act*, 1847, *s.* 68.—Justices sitting to hear a summons for payment of a water-rate can decide a dispute as to the annual value upon which the rate is to be assessed.—*Lea* v. *Abergavenny Improvement Commissioners*, L.R. 16 Q.B.D. 18; 53 L.T. 728; 34 W.R. 105.

Will :—

(iii.) **C. A.**—*Construction—Lapse—Intestacy.*—Decision of Ch. D. (*see* Vol. **10**, 24, vi.) affirmed.—*Re Roberts; Tarleton* v. *Bruton*, L.R. 30 Ch. D. 234; 53 L.T. 432.

(iv.) **C. A.**—*Construction—Blank Space.*—A testatrix executed as her will a printed form with blanks, some of which only she filled. The will read shortly as follows: "I direct my debts to be paid by my executrix. I give all my estate unto   to and for her own use and benefit absolutely, and I appoint my niece C. executrix." *Held*, that C. took the estate beneficially.—*Re Harrison; Turner* v. *Hellard*, L.R. 30 Ch. D. 390.

(v.) **C. A.**—*Construction—Quantum of Estate Devised to Trustees—Rule in Shelley's Case.*—By her will, made in 1833, a testatrix devised a freehold tenement to trustees and their heirs, upon trust for E. (her daughter) for life, and after E.'s death upon such trusts for E.'s children as E. should appoint, and in default of appointment in trust for E.'s right heirs. E.'s interest was to be for her separate use, and her receipt was to be a discharge to the trustees for all moneys payable to her; and the trustees were empowered to sell or exchange the tenement, with the consent of the person for the time being beneficially interested. E. survived the testatrix, conveyed the tenement in fee simple, and died without having been married. *Held*, that the legal fee was in the trustees; that the limitation to the heirs of E. was a remainder, and not an executory devise; that E.'s life interest and the remainder to her heirs, both being equitable, coalesced under the rule in Shelley's case, and that consequently the fee had passed by her grant.—Whether, and how far, the trustees of a will take the legal estate in (and not a mere power over) realty of their testator devised by the will, depends upon the intention of the testator, to be gathered from the will.—An express gift in default of appointment precludes an implication.—*Richardson* v. *Harrison*, L.R. 16 Q.B.D. 85; 55 L.J. Q.B. 58.

(vi.) **C. A.**—*Construction—"Mortgages on Real and Leasehold Security."*—Decision of Ch. D. (*see* Vol. **9**, p. 55, v.) reversed. *Cavendish* v. *Cavendish*, L.R. 30 Ch. D. 227; 53 L.T. 652.

(vii.) **Ch. D.**—*Construction—Devise of Onerous Freehold Property and Bequest of Furniture &c.*—A testator devised and bequeathed a freehold house and the household effects therein upon trust for A. and B. for life. The house was mortgaged beyond its value. *Held*, that A. and B. were not

bound to make good to the testator's estate any part of the excess of the interest upon the mortgage debt over the rent of the house.—*Syer* v. *Gladstone*, L.R. 30 Ch. D. 614.

(i.) **C. A.**—*Construction—Option to Purchase Hotel, whether Personal.*—A hotel-keeper by his will devised and bequeathed his property, which included a hotel, to trustees, upon trust to pay certain annuities out of the income and to divide the residue of the income amongst his children, and declared that, after the decease of the survivor of the annuitants, his son, who was also a hotel-keeper, should have the option of purchasing the hotel at the price of £10,000, which the testator might reasonably be supposed to have considered the fair value of the hotel. The son died in the lifetime of the annuitants. *Held,* that his executors were not entitled to exercise the option.—*Re Cousins; Alexander* v. *Cross*, L.R. 30 Ch. D. 203.

(ii.) **Ch. D.**—*Construction—"Children"—Illegitimate Child.*—A testator, by his will, bequeathed legacies to "M., the daughter of my nephew J.," and to "T., son of the said J.," and gave the residue of his estate to the children of J. equally. In a codicil, by which he gave a legacy to "A., another daughter of my nephew J.," he described M. as his great-niece and T. as his great-nephew. M. was, as the testator knew, the illegitimate daughter of J., but had always been treated as a member of the family in the same way as J.'s other children. T. and A. were legitimate children of J. *Held*, that M. was entitled to a share of the residue.—*Re Bryon; Drummond* v. *Leigh*, L.R. 30 Ch. D. 110; 55 L J. Ch. 30.

(iii.) **Ch. D.**—*Construction—Trust.*—A testator, by his will, gave all his household furniture, &c., and all his real and personal estate, and sums of money in the house, and all sums of money in the savings bank, and all other his estate and effects, with the exception of two £5 shares in a company, to his wife, and gave the two £5 shares to his two sons. The will concluded thus: "And I also desire that, at the decease of my wife, what may remain of my property shall be equally divided amongst my surviving children." *Held*, that the widow only took a life interest in the property.—*Re Sheldon and Kemble*, 53 L.T. 527.

(iv.) **Ch. D.**—*Construction—"Entitled."*—A testatrix, by her will, created certain tenancies for life, and directed that, upon the termination of those estates, the property should be sold and the proceeds equally divided between her three nephews and niece; "but should either of my aforesaid nephews or niece happen to die before they are entitled to the property, leaving issue, I give the share of him or her so dying to his or her child or children, share and share alike." *Held*, that "entitled" meant "entitled in possession," and not "entitled in right."—*Re Noyce; Brown* v. *Rigg*, L.R. 31 Ch. D. 75; 53 L.T. 688; 34 W.R. 147.

(v.) **Ch. D.**—*Construction—Incapacity of Legatee—Substitutional Gift—Acceleration of Interests.*—A testator, who died in 1876, devised and bequeathed his real and personal estate to his wife for life, and after her death to be equally divided between such of his children as should be living at the time of her death; but in case of any of the above-mentioned children dying before her, leaving children, their parent's share was to be equally divided amongst them. In the event of any of his daughters being married at his wife's death, such proportion as they should be entitled to as above-mentioned was "to be left to them and their children exclusively," and in no way controlled by their husbands. The testator's widow died in 1885. A daughter then living was, at the time of the execution of the will, the wife of one of the attesting

witnesses. *Held*, that her children were entitled to the share which, but for that circumstance, she would have taken.—*Re Clark; Clark* v. *Randall*, L.R. 31 Ch. D. 72; 55 L.J. Ch. 89; 53 L.T. 591; 34 W.R. 70.

(i.) **Ch. D.**—*Construction—Bequest of Income until Marriage, Corpus upon Marriage.*—A testatrix, after specific bequests of bonds, gave all the rest of her stocks and shares upon trust to pay the dividends and interest to G. until his marriage and at the time of his marriage to hand over the stocks and shares to him. There was no gift over. *Held*, that G.'s interest in the corpus was vested.—*Re Wrey; Stuart* v. *Wrey*, L.R. 30 Ch. D. 507; 54 L.J. Ch. 1098; 53 L.T. 334.

(ii.) **Ch. D.**—*Construction—Gift, Vested or Contingent.*—A testator bequeathed a sum of money to trustees, upon trust to pay the income to his daughter A. for life, and after her death to pay and divide the capital between her children, in equal shares, who, being sons, should attain 21, or, being daughters, attain that age or be married, and, if only one child, then wholly to him or her; if no child should live to attain a vested interest, then the fund was to be paid to his sons B. and C. A. had an only daughter, D., who died unmarried in infancy. *Held*, that D. had not taken a vested interest in the fund.—*Doré* v. *Fletcher*, 34 W.R. 29.

(iii.) **Ch. D.**—*Construction—Time for Ascertaining Class.*—A testator gave his residue to trustees, upon trust for his five children, and directed the trustees to retain the shares of his daughters, upon trust to pay the income to them and their husbands during their respective lives, and after the death of the survivor of each daughter and her husband to pay the corpus to her children; and, in case a daughter should not leave any child living at the decease of the survivor of herself and her husband, her share was to be in trust for the persons who under the statutes for the distribution of the estates of intestates would on her decease have been entitled thereto in case she had survived her husband and had then died possessed thereof and intestate. A daughter died without issue in the lifetime of her husband. *Held*, that her death was the time for ascertaining her next-of-kin.—*Druitt* v. *Seward*, 34 W.R. 180.

(iv.) **Ch. D.**—*Construction—Life Tenant Donee of Testamentary Power of Appointment—Rule against Perpetuities.*—F., by his will, devised his freehold estate at K. to his daughter H. for life, and declared that she should not have power to mortgage or sell it, or give it away, during her life, but that at her decease she might give it to whom she pleased. H. executed a postnuptial settlement of the estate, and also appointed it by her will. *Held*, that the postnuptial settlement was of no effect, and that time began to run against the limitations of her will from the date of her death.—*Re Flower; Edmonds* v. *Edmonds*, 53 L.T. 717; 34 W.R. 149.

(v.) **Ch. D.**—*Bequest Subject to Debts.*—The acceptance of a specific legacy bequeathed "subject to" payment of debts &c.: *Held*, not to have rendered the legatee personally liable to pay the debts &c.—*Re Cowley; Souch* v. *Cowley*, 53 L.T. 494.

(vi.) **Ch. D.**—*Construction—Charge of Legacies on Real Estate—Course of Administration—Gift of Land to Charity.*—A testator, after giving various pecuniary legacies, gave his general personal estate, with the exception of money and securities for money, to R. The will charged the real estate with the payment of legacies. *Held*, that R. was not entitled to have made good out of the proceeds of the real estate what she had lost by the general personal estate being applied in payment of the pecuniary legacies.—The testator gave the residue of his real and

personal estate to trustees, in trust, as to such part or parts as might be lawfully appropriated to the purpose, for any hospital of a charitable nature, in such proportions as they should think fit. *Held*, that the trustees were entitled to appropriate the residue to a hospital authorized to take lands by devise.—*Re Ovey; Broadbent* v. *Barrow*, L.R. 31 Ch. D 113; 53 L.T. 723; 34 W.R. 100.

(i.) **C. A.**—*Primary Fund for Payment of Debts &c.—Lapsed Bequest.*—The estate of a testatrix who had charged her real estate, and, in so far as that should not suffice, her leaseholds, with debts and legacies, in exoneration of her personal estate, included impure personalty, viz., a mortgage debt, the gift of which lapsed. *Held*, that the debts and legacies must be apportioned between the pure and impure personalty, including the leaseholds; that first the real estate and then the leaseholds must be applied in exoneration of the pure personalty; and that the impure personalty must bear its proper proportion of the debts &c.—Order of Ch. D. (*see* Vol. **10**, p. 124, ii.), varied.—The principle that, where the gift to the person intended to be benefited by the exoneration fails, the exoneration itself fails, applies equally whether the property charged in exoneration be realty or personalty.—*Kilford* v. *Blaney; re Meere*, L.R. 31 Ch. D. 56; 34 W.R. 109.

(ii.) **C. A.**—*Trees Blown Down in Testator's Lifetime, whether belonging to Executor or Devisee.*—In ascertaining whether trees blown down in the lifetime of the owner in fee belong to his executor or his devisee, the test is whether or not the trees are severed.—Decision of Ch. D. (*see* Vol. **10**, p. 58, i) reversed.—*Re Ainslie; Swinburn* v. *Ainslie*, L.R. 30 Ch. D. 485; 53 L.T. 645.

And see Election, p. 39, vi., vii. Husband and Wife, p. 41, v. Satisfaction.

Windfalls.—*See* preceding case.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR FEBRUARY, MARCH AND APRIL, 1886,

By OLIVER SMITH, M.A., of the Inner Temple,

Barrister-at-Law.

Administration:—

(i.) **P. D.**—*Probate Court Act*, 1857, *s.* 73.—Case in which, the estate being insolvent, the Court granted administration in accordance with the wishes of the creditors, under the above section.—*In the goods of Clayton*, 34 W.R. 444.

(ii.) **P. D.**—*Revocation of Letters of Administration—Married Woman.*—Administration was granted to a woman, who, after intermeddling with the estate, married. Her husband deserted her and disappeared. His consent being deemed necessary to a sale of part of the unadministered estate, application was made for revocation of the letters of administration and a fresh grant. Application refused.—*In the goods of Reid*, 34 W.R. 368.

(iii.) **Ch. D.**—*Receiver—Executor—Retainer*—32 *&* 33 *Vict.*, *c.* 46.—The possession of a receiver appointed in an action brought for the administration of a testator's estate is not the possession of the testator's executor, so as to enable the latter to assert a right of retainer as against assets of the testator which have come to the receiver's hands.—Hinde Palmer's Act does not enable an executor who is only a simple contract creditor of his testator to exercise his right of retainer as against the testator's specialty creditors.—*Re Jones; Calver v. Laxton*, L.R. 31 Ch. D. 440; 53 L.T. 855; 33 W.R. 249.

(iv.) **Ch. D.**—*Costs.*—Action for the administration of the estate of a testator, brought by a residuary legatee against the executor, who was a specific devisee, and another specific devisee. The will had been established in an action, instituted by the same residuary legatee, in the Probate Division, in which an order had been made for the payment of the costs of all parties out of the personal estate. The principal

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question in the administration action, viz., whether certain sums of money were to be raised out of the specifically devised estates, had been decided in favour of the specific devisees. Upon further consideration in the administration action: *Held*, that the executor was entitled to have his costs of the administration action, and his costs, charges and expenses properly incurred, including his costs of the probate action, as between solicitor and client, paid out of the personal estate; and that the plaintiff and the other defendant were entitled to their costs of the administration action as between party and party, such costs to be assessed, so far as the personal estate should be insufficient to pay them, rateably upon the specifically devised estates in proportion to their respective values at the time of the testator's death.—*Re Price; Williams* v. *Jenkins*, L.R. 31 Ch. D. 485; 34 W.R. 291.

And see Practice, p. 90, i., ix. Will, p. 103, ii.

Apportionment :—

(i.) **C. A.**—*Apportionment Act*, 1870, *s.* 2—*Will Excusing Rent Due at Time of Death.*—The will of a testator who died on the 12th of February, 1881, contained the following clause: "I direct my executors to forgive my tenant, J. P., all rent or arrears of rent which may be due and owing from him at the time of my decease." The rent was payable at Lady-day and Michaelmas. *Held*, that the rent for the period from Michaelmas, 1880, to the death of the testator was not remitted.—*Re Lucas; Parish* v. *Hudson*, 55 L.J. Ch. 101; 54 L.T. 30.

Arbitration :—

(ii.) **Q. B. D.**—17 *&* 18 *Vict., c.* 125, *s.* 15—38 *&* 39 *Vict., c.* 55, *s.* 180.—The provisions of s. 15 of the Common Law Procedure Act, 1854, do not apply to an arbitration under the Public Health Act, 1875, so as to enable the Court to enlarge the time for the making of an award by an umpire beyond the period of two months from the date of the reference to him.—*Re Mackenzie & the Ascot District Gas Co.*, 34 W.R. 487.

Auctioneer :—

(iii.) **Ch. D.**—*Sale for Cash—Right of Vendor to follow Purchase-money.*—In the absence of fraud, if an auctioneer, employed to sell goods, and authorized to receive the price, receives the price, whether in cash or by cheque, and pays it into his private banking account, his principal cannot follow it in the banker's hands, even though the latter had notice that it was the produce of the sale.—*Marten* v. *Rocke*, 53 L.T. 946; 34 W.R. 253.

And see Bill of Sale, p. 74, vi.

Banker.—*See* Auctioneer.

Bankruptcy :—

(iv.) **Q. B. D.**—*Execution—Charging Order—Bankruptcy Act*, 1883, *s.* 45.—An order *nisi* charging shares, under 1 & 2 Vict., c. 110, s. 14, is not "an execution against the goods of a debtor" which, under s. 45 of the Bankruptcy Act, 1883, must be completed by seizure and sale, if the creditor is to retain the benefit of it as against the trustee in the debtor's bankruptcy.—*Re Hutchinson; e. p. Hutchinson (or Plowden)*, L.R. 16 Q.B.D. 515.

(v.) **Q. B. D.**—*Execution—Sale by Sheriff—Landlord's Claim for Rent—8 Anne, c.* 14—*Bankruptcy Act*, 1883, *ss.* 42, 46.—A landlord can only claim from the party issuing execution against his tenant the amount

of rent actually due at the time of the goods being taken in execution.—The rule that, for the purpose of freedom from distress, goods are equally *in custodiâ legis*, whether in the hands of the sheriff or in the hands of his vendee, only applies to goods incapable of removal, such as growing crops, not to goods remaining on the premises for the convenience of the vendee.—*E. p. the Pollen Trustees; re Davis*, 34 W.R. 442.

(i.) **Q. B. D.**—*Motion by Creditor—Leave—Evidence—Leave to examine witness vivâ voce.*—A creditor wishing to move the Court in his own name for a declaration against the trustees of a bankrupt's marriage settlement must obtain leave for the purpose.—The proper course is to launch a motion on affidavit. If it becomes necessary to tender *vivâ voce* evidence, application must be made for leave to do so.—*E.-p. Kearsley; re Genese*, 34 W.R. 473.

(ii.) **C. A.**—*Receiving Order—Jurisdiction—Domicil of Debtor—Residence—Bankruptcy Act*, 1883, *s.* 6, *sub-s.* 1 (*d*); *s.* 95.—In an affidavit in opposition to a petition for a receiving order, sworn by the debtor, who bore an English name, before the British consul at Brussels, the debtor described himself as "of No. 74, Avenue de la Toison d'Or, Brussels, Belgium, a retired officer in Her Majesty's army." *Held*, that, although under the above sections, the burden of proving the domicil and residence of a debtor, where disputed, is upon the petitioning creditor, the English domicil and the residence abroad of the debtor were sufficiently proved to found the jurisdiction of the High Court.—*E. p. Barne; re Barne*, L.R. 16 Q.B.D. 522.

(iii.) **Q. B. D.**—*Rejection of Proof—Time—G. R.* 171-3.—Where the official receiver has omitted to reject a proof within fourteen days after its receipt, the proof is not necessarily to be taken, as against a subsequently appointed trustee, to have been admitted.—*Re Sissling; e. p. Fenton*, 53 L.T. 967.

(iv.) **Q. B. D.**—*Rejection of Proof by Court—Subsequent Compromise—Taxation.*—After a county court judge had, upon the motion of B., a creditor, expunged a proof by A. in the bankruptcy of C., the trustee, being advised that the proof was good, entered into negotiations for a compromise; which resulted in a settlement upon the terms that A.'s claim should be reduced, that A.'s costs should be taxed as between solicitor and client, and that B.'s costs should be paid by the trustee out of the estate. The county court judge having refused taxation: *Held*, that he was right.—*Re Green; e. p. Edmunds*, 53 L.T. 967.

And see Bill of Sale, p. 74, vii. Criminal Law, p. 79, vi.

Bastardy:—

(v.) **Q. B. D.**—*Appeal.*—On an appeal to quarter sessions against an affiliation order under 7 & 8 Vict., c. 101, s. 4, the procedure prescribed by s. 31 of the Summary Jurisdiction Act, 1879, must be followed.—*Shingler* v. *Smith*, 34 W.R. 490.

Bill of Sale:—

(vi.) **Q. B. D.**—*Bill of Sale given by Equitable Owner.*—*Bills of Sale Acts, 1878 & 1882.*—By an indenture executed, before their marriage, by a husband and wife, and also by a trustee appointed by the wife, it was declared and agreed that the property of the wife should belong to her for her separate use. The deed contained no assignment of the property to the trustee. After the marriage the wife alone assigned part of the property, by a bill of sale, as security for an advance. The bill of sale was in the form required by, and was duly registered under, the above

acts. *Held*, that the bill of sale was valid as against an execution creditor of the husband, and also as against an execution creditor of the husband and wife.—*Walrond* v. *Goldmann*; *Mills* v. *Goldmann*; *The Real and Personal Advance Company, claimants*, L.R. 16 Q.B.D. 121; 53 L.T. 963; 34 W.R. 272.

(i.) **C. A.**—*Bills of Sale Act*, 1878, *Amendment Act*, 1882, *s.* 9—*Form in Schedule.*—Decision of Q. B. D. (*see* Vol. **II.**, p. 32, viii.) affirmed.—*E. p. Stanford; re Barber*, 34 W.R. 237.

(ii.) **C. A.**—*Bills of Sale Act*, 1882; *Form in Schedule—Seizure in Default of Payment of Instalment—Capitalized Interest.*—By a bill of sale, given, in 1885, to secure £115, together with £15, agreed interest and bonus, the grantor consented to pay the sum of £130 by twelve equal instalments of £10 16s. 8d.; and the grantee was empowered to seize and sell the goods on default in payment of any instalment, and to retain the proceeds to the extent of the whole sum secured. *Held*, that the bill was void, first, by reason of its containing such power, and, secondly, because it did not show what rate of interest was to be paid.—*Myers* v. *Elliott*, L.R. 16 Q.B.D. 526; 34 W.R. 339.

(iii.) **C. A.**—*Grantor Conveying as "Beneficial Owner"—Bills of Sale Act*, 1882, *ss.* 7, 9—*Conveyancing Act*, 1881, *s.* 7, *sub-s. C.*—In a bill of sale the grantor was expressed to convey as beneficial owner: *Held*, that the bill of sale was void.—*E. p. Stanford; re Barber* (*No.* 2), 34 W.R. 287.

(iv.) **Q. B. D.**—*Interest upon Interest, upon Premiums of Insurance, and upon Rent &c.—Bills of Sale Act*, 1882, *s.* 9.—Provisions (1) for payment of interest upon interest; (2) that, in default of the grantor insuring, the grantee might do so, and charge the costs of insurance, with interest at 20 *per cent.*, to the grantor, until the whole property was redeemed; and (3) enabling the grantee to charge rent, rates and taxes, with interest at 20 *per cent.*, on the security: *Held*, to avoid a bill of sale.—*Goldstrom* v. *Tallerman*, 34 W.R. 459.

(v.) **Ch. D.**—*Payable on Demand—Bills of Sale Act*, 1882, *s.* 9—*Bankruptcy—Execution—Seizure and Sale—Bankruptcy Act*, 1883, *ss.* 45, 46.—A bill of sale which provides for repayment of the loan on demand is void.—Where a sheriff has seized goods on behalf of an execution creditor, but is ordered before sale to withdraw in favour of a receiver in an action in the Chancery Division, the execution has not been completed, within s. 45 of the B. A., 1883.—*Mackay* v. *Merritt*, 34 W.R. 433.

(vi.) **C. A.**—*Registration—Licence to Auctioneer to Seize and Sell—Bills of Sale Act*, 1882.—Decision of Q. B. D. (*see* Vol. **II**, p. 32, v.) affirmed.—*E. p. Parsons* (*or Clarke*); *re Townsend*, L.R. 16. Q.B.D. 532; 55 L.J. Q.B. 137; 53 L.T. 897; 34 W.R. 329.

(vii.) **Q. B. D.**—*Registration—Mortgage of Leaseholds and Trade Fixtures—Bills of Sale Act*, 1854, *s.* 1—"*Assignment for the Benefit of the Creditors.*"—A mortgage of a leasehold paper-mill and, by a separate operative part, of all the trade fixtures in and upon it: *Held*, under the above section, void, for want of registration, as against the trustee of a deed by which the mortgagor had assigned all his estate and effects for the benefit of such of his creditors as should elect to execute such deed of assignment.—*Paine* v. *Matthews*, 53 L.T. 872.

(viii.) **Ch. D.**—*Transaction Equivalent to Mortgage—Bills of Sale Act*, 1882, *s.* 9—*Railways Clauses Consolidation Act*, 1845, *s.* 97—*Tolls.*—The plaintiffs having advanced £1,000 to a colliery company, in part to enable the latter to redeem a charge upon certain wagons, the colliery

company delivered the wagons to the plaintiffs. The plaintiffs then agreed to let the wagons to the colliery company for three years at a fixed rental, equivalent in the whole to a payment of £1,000 and interest at 7 *per cent.*, with an option to the colliery company to purchase the wagons for a nominal sum at the end of the term. *Held*, that the transaction was void for non-compliance with the Bills of Sale Act, 1882.—A railway company's charges for supplying locomotive power: *Held*, tolls within s. 97 of the R. C. C. A., 1845.—*North Central Wagon Co.* v. *Manchester, Sheffield and Lincolnshire Railway Co.*, 34 W.R. 430.

Carrier.—*See* Railway, p. 94, vi.

Charity:—

(i.) **Ch. D.**—*Friendly Society—Charitable Trusts Act*, 1853, *ss.* 17, 62.—A friendly society may be a "charity," although poverty be not an essential qualification for relief from its funds.—*Pease* v. *Pattinson*, 54 L.T. 209; 34 W.R. 361.

(ii.) **Q. B. D.**—6 *Geo.* IV., *c.* cxxxii., *s.* 103—"*Public Charity*"—*Railway Servants' Orphanage.*—An institution for the maintenance and education of orphans, the children of railway servants, supported, substantially, by donations from the public: *Held*, a public charity within the above section.—*Hall* v. *Derby Urban Sanitary Authority*, L.R. 16 Q.B.D. 163; 55 L.J. M.C. 21; 54 L.T. 175.

Colonial Law:—

(iii.) **Nova Scotia.—P. C.**—*Mistake—Money Had and Received—Privity.*—The plaintiffs, through the mistake of their agents, acting upon ambiguous instructions received from the agent of R., remitted to the defendants moneys belonging to R. which ought to have been remitted to the B. N. A. bank. The defendants credited R., who was in their debt, with the amount, and, although authorized to do so by all the parties whom they knew in the transaction, refused to rectify the mistake. *Held*, that the plaintiffs were entitled to recall the money out of the defendants' hands into their own.—*Colonial Bank* v. *Exchange Bank of Yarmouth, Nova Scotia*, L.R. 11 App. Cas. 84; 54 L.T. 257; 24 W.R. 417.

Company:—

(iv.) **H. L.**—*Blank Transfer—Equitable Mortgage—Priority—Notice.*—Decision of C. A. (*see* Vol. **10**, p. 63, ix.) affirmed.—*Société Générale de Paris* v. *Walker* (or *Tramways Union Co.*), L.R. 11 App. Cas. 20; 55 L.J. Q.B. 169.

(v.) **Ch. D.**—*Building Society—Winding-up—Depositors—Priority.*—A building society had power to receive money on deposit. Deposits were withdrawable upon notice. On the company going into liquidation: *Held*, that, in the distribution of its funds, unpaid depositors who had given notice of withdrawal before the date of the presentation of the petition ranked *pari passu* with depositors who had not given notice of withdrawal and with the other outside creditors of the company.—*Re the Progressive Investment and Building Soc.*; *e. p. Corbold*, 54 L.T. 45.

(vi.) **Ch. D.**—*Life Assurance Company—Petition for Winding-up—Reference to Chambers for Scheme for Reducing Contracts—Life Assurance Companies Act*, 1870, *s.* 22—*Practice.*—Upon a petition for winding-up an insolvent life assurance company, presented by a policy-holder and a shareholder, it being suggested on behalf of the petitioners that there should be a reference to chambers to see, after meetings had been held,

whether, instead of a winding-up order being made, a scheme could be adopted for reducing the amount of the contracts of the company: Reference ordered accordingly; the petition to stand over generally for meetings to be held; the meetings of the policy-holders and shareholders to be separate; and the policy-holders whose claims had been declared, those whose claims had not been declared, and the shareholders, respectively, to appoint separate representatives.—*Re Briton Medical and General Life Assurance Co.*, 54 L.T. 14.

(i.) **Ch. D.**—*Officer—Companies Act*, 1862, *s.* 165—*Solicitor.*—The solicitor of a company is not an officer of the company under the above section. —*Re Great Western Forest of Dean Coal Consumers' Co.; Carter's case*, L.R. 31 Ch. D. 496.

(ii.) **Ch. D.**—*Promoter—Costs—Higher Scale—R. S. C.*, 1883, *O.* lxv., *r.* 9. —An agent of the vendors to a company who has confined himself to his duties as such agent, and not put into his pocket money which would otherwise have remained in the coffers of the company, cannot be treated as a promoter; nor does his having bargained that he should have the selling of the company's goods on commission shew such an interest in the formation of the company as will constitute him a promoter.—Costs on the higher scale will be allowed, whenever witnesses are properly brought into Court, and the argument necessarily occupies a good deal of time.—*Lydney and Wigpool Iron Ore Co.* v. *Bird*, L.R. 31 Ch. D. 328; 54 L.T. 242; 34 W.R. 437.

(iii.) **Ch. D.**—*Promoter's Agreement.*—A contract with a person as trustee for a company not yet formed cannot be enforced against the company when incorporated.—*Re Northumberland Avenue Hotel Co.; Sully's case*, 54 L.T. 76.

(iv) **Ch. D.**—*Reduction of Capital—Companies Acts*, 1862, *ss.* 9—11, 13, 14; 1877, *ss.* 3, 4; *G. O., March*, 1868, *rr.* 2-20.—Petition for confirmation of a resolution for reduction of capital from £1,000,000 to £400,000, and for leave to dispense with the words "and reduced" as part of the name of the company. No prospectus had been issued. The presentation of the petition had been advertised. The only creditor consented. Order made, without reference to chambers, and without further advertisement being required, subject to the production of an affidavit that no prospectus had been issued.—*Re West African Telegraph Co.*, 34 W.R. 411.

(v.) **Q. B. D.**—*Registration—Loan Society.*—A society formed for a purpose authorized by the Treasury as a purpose to which the powers and facilities of the Friendly Societies Act, 1875, ought to be extended, and registered under s. 8, sub-s. 5, of that Act, need not be registered under s. 4 of the Companies Act, 1862.—*Peat* v. *Fowler*, 34 W.R. 366.

(vi.) **Q. B. D.**—*Sci. fa.—Companies Clauses Consolidation Act*, 1845, *s.* 36—*Director named in special Act resigning.*—Application, by a plaintiff who in 1885 had recovered judgment against a company for services rendered by him as surveyor and engineer in relation to the formation of the company, for leave to issue execution against the defendant personally. The defendant had been described in the company's special Act, passed in 1882, as one of the original directors of the company; who, by the Act, were to continue in office until the first ordinary meeting; the qualification of a director being the possession of 100 shares. After attending one board meeting, he had resigned. This was in 1882. He had not taken any other part in the affairs of the company; no shares had been allotted to him; no register of shares had been kept. *Held*, that there was nothing to create an estoppel in favour of the plaintiff; and application accordingly refused.—*Mammatt* v. *Brett*, 54 L.T. 165.

(i.) **Ch. D.**—*Winding-up — Contributory — Sighatory of Memorandum of Association—Estoppel—Companies Act*, 1862, *ss.* 6, 18, 23.—W. signed the memorandum of association of a company for 100 shares and was one of its first directors. After attending the first meeting of directors he resigned his directorship. Shortly afterwards the secretary of the company wrote to inform him that the 100 shares for which he had subscribed had been allotted to another person. This was in 1875, the year in which the company was registered. The company's articles of association contained no power to accept surrenders of shares. No register of shares was ever kept. In 1879 the company went into liquidation. In 1885 W. was placed on the list of contributories. *Held*, that he was rightly so placed.—*Re the Argyle Coal and Cannell Co.; e. p. Watson*, 54 L.T. 233.

(ii.) **Ch. D.**—*Winding-up—Contributory—Subscriber of Memorandum who has applied for Additional Shares—Companies Act*, 1862, *s.* 2.—On the formation of a limited company G. subscribed the memorandum of association for 50 shares, in order to qualify himself as a director. Soon after the company was registered, desiring to take 50 more shares, he applied for 100 shares. 100 shares were allotted to him accordingly; he paid for them in full; and they were registered in his name. The company having got into liquidation: Summons by the liquidator to settle G. on the list of contributories in respect of 50 further shares, dismissed with costs.—*Re Crooke's Mining and Smelting Co.; Gilman's case*, L.R. 31 Ch. D. 420; 54 L.T. 205; 34 W.R. 362.

(iii.) **Ch. D.**—*Winding-up—Fraudulent Preference—Companies Act*, 1862, *s.* 164.—By virtue of the above section the doctrine of undue preference applies to the winding-up of a company, as it does to the bankruptcy of an individual; but, as in the case of a bankruptcy, so in the case of a winding-up, it can only be invoked for the benefit of the general body of creditors, and not for the benefit of a single creditor or a single class of creditors.—*Willmott* v. *London Celluloid Co.*, L.R. 31 Ch. D. 425; 54 L.T. 206; 34 W.R. 342.

(iv.) **Ch. D.**—*Winding-up Order—Amendment—Companies Act*, 1882; *Order of November*, 1882, *rr.* 2, 53; *R. S. C.*, 1883, *O.* xxviii., *r.* 11.—Where a winding-up order had been made, but the name of the company incorrectly stated in the petition: *Held*, that the Court had jurisdiction to make an order giving leave to amend the petition in that respect and advertise the petition and winding-up order, and directing that, if no notice of opposition were received within seven days, the winding-up order should be drawn up.—*Re Army and Navy Hotel*, 34 W.R. 389.

(v.) **Ch. D.**—*Winding-up Petition—Injunction—Companies Act*, 1862, *s.* 85.—The Court has jurisdiction under the above section to restrain proceedings in an action brought to recover penalties, whether under the Companies Act, 1862, or under the Life Assurance Companies Act, 1870, from a company against which a winding-up petition has been presented.—*Re Briton Medical and General Life Association* (*No.* 2), 54 L.T. 152; 34 W.R. 390.

And see Practice, p. 92, v.

Compensation.—*See* Lands Clauses Act. Railway, p. 94, v.

Contract:—

(vi.) **Q. B. D.**—*Accord and Satisfaction—Cheque "Sent to Balance Account," retained "on Account" and Cashed.*—A sum of money being due to A. from B., amounting, according to A.'s view, to £76 1s., but, according to B.'s view, to only £36 18s. 6d., B. sent A. a cheque "to balance account as *per* enclosed statement." A. replied, stating the amount which, according

to his view, was due to him, and offering to take the cheque "on account." B. then wrote a further letter, sending a further cheque for only £3 16s. 2d., but not expressly rejecting A.'s counter-proposal. In an action brought by A. after a considerable interval to recover the balance of the £76 1s.: *Held*, that A. was not precluded from shewing that he had not accepted the cheques in full satisfaction.—*Ackroyd* v. *Smithies*, 54 L.T. 130.

(i.) **C. A.**—*Breach—Repudiation before Time for Performance—Declaration of Inability to Perform.*—By a covenant in a lease the lessor undertook to rebuild the premises demised upon notice. The lease gave to the lessee a right to put an end to the term by notice. The lessor having informed the lessee that, owing to want of funds, he would not be able to rebuild the premises, the lessee gave him notice to determine the lease. The term came to an end, without the lessee having given the lessor notice to rebuild. The lessee continued to occupy the premises for some months after the determination of the term, on the chance of the lessor being able to procure funds. *Held*, that the lessee could not maintain an action against the lessor for breach of the covenant to rebuild.—*Johnstone* v. *Milling*, L.R 16 Q.B.D. 460; 55 L.J. Q.B. 162; 34 W.R. 238.

And see Company, p. 76, iii. Damages, p. 79, vii. Mortgage, p. 86, ii.

Contribution.—*See* Partnership, p. 86, v.

Copyright:—

(ii.) **Ch. D.**—*Copyright Act*, 1842, *s.* 24.—*Held*, that an entry at Stationers' Hall, made before the writ was issued, although on the same day, satisfied the requirement of the above section.—*Warne* v. *Lawrence*, 34 W.R. 452.

Costs.—*See* Administration, p. 71, iv. Bankruptcy, p. 73, iv. Company, p. 76, ii. Mortgage, p. 85, iv. Practice, p. 89, iii. Solicitor, p. 97, v.

Counsel.—*See* Practice, p. 89, iii.

County Court:—

(iii.) **Q. B. D.**—*County Court Rules*, 1880, *Ord.* 39*b.*, *r.* 16.—Notice of demand for a jury was ordered to be given fifteen days before the return day. It was not so given. *Held*, that the right to demand a jury was lost, and was not revived by a notice given fifteen days before the day eventually fixed, by adjournment, for the hearing.—*R.* v. *Registrar of Leeds County Court*, 34 W.R. 487.

And see Practice, p. 91, i.; 92, ii.

Criminal Law:—

(iv.) **C. C. R.**—*Compounding Larceny—Sufficiency of Indictment—Defendant not Owner of the Goods Stolen.*—An indictment for compounding a felony need not allege that the prisoner desisted from prosecuting the felon. —Theft-bote can be committed by a person other than the owner of the goods.—*R.* v. *Burgess*, L.R. 16 Q.B.D. 141; 53 L.T. 918; 34 W.R. 306.

(v.) **C. C. R.**—*Criminal Law Amendment Act*, 1885, *s.* 6—*Householder Permitting Defilement of Young Girl on his Premises.*—A., the occupier of certain premises, knowingly suffered B., a girl under sixteen, to be upon such premises for the purpose of being unlawfully and carnally known by a man. B. was A.'s illegitimate daughter, and lived with her upon the premises in question, having no other home. *Held*, that A. was rightly convicted under the above section.—*R.* v. *Webster*, L.R. 16 Q.B.D. 134; 55 L.J. M.C. 63; 53 L.T. 824; 34 W.R. 324.

(i.) **C. C. R.**—*Embezzlement of Moneys of Co-partnership*—31 & 32 *Vict.*, *c.* 116, *s.* 1.—Participation in profits is of the essence of a partnership.—An association having for its objects "the extension of the kingdom of the Lord Jesus Christ among young men and the development of their spiritual life and mental powers:" *Held*, not a co-partnership within the above section.—*R.* v. *Robson*, L.R. 16 Q.B.D. 137; 55 L.J. M.C. 55; 53 L.T. 823; 34 W.R. 276.

(ii.) **Q. B. D.**—*Highway—Wilful Obstruction—Highway Act*, 1835, *s.* 72.—H. intentionally collected a crowd round him in a public highway: *Held*, that he was guilty of a wilful obstruction within the above section.—The public are only entitled to use a highway for the purpose of passing and repassing.—*Homer* v. *Cadman*, 34 W.R. 413.

(iii.) **C. C. R.**—*Larceny—Innocent Receipt of Chattel—Subsequent Fraudulent Misappropriation.*—To justify a conviction for larceny the receipt and appropriation must be simultaneous.—*R.* v. *Flowers*, L.R. 16 Q.B.D. 643; 34 W.R. 367.

(iv.) **N. P.**—*Preliminary Inquiry—Cross-examination—S. J. A.*, 1884, *s.* 7.—The right of counsel or a solicitor, representing a person charged with an indictable offence, to cross-examine the witnesses for the prosecution, is absolute, both under the Summary Jurisdiction Acts and at common law.—*R.* v. *Griffiths*, 54 L.T. 280.

(v.) **Q. B. D.**—*Summary Conviction—Penalty—Summary Jurisdiction Act*, 1879, *s.* 5.—Where the Act upon which a summary conviction is founded empowers justices to impose either a fine or hard labour, at their option, the above section empowers them to award hard labour for default in payment of a fine.—*R.* v. *Justices of Tynemouth*, L.R. 16 Q.B.D. 647.

(vi.) **C. C. R.**—*Undischarged Bankrupt—"Obtaining Credit"—Bankruptcy Act*, 1883, *s.* 31.—It is not necessary, for an undischarged bankrupt to be guilty under the above section of the offence of "obtaining credit to the amount of £20 or upwards from any person without informing such person that he is an undischarged bankrupt," that he should have stipulated for credit; it is sufficient that he has obtained credit in fact.—*R.* v. *Peters*, L.R. 16 Q.B.D. 636; 34 W.R. 399.

Damages:—

(vii.) **N. P.**—*Breach of Contract—Measure of Damages.*—The plaintiff employed the defendant, a competent contractor, to do work for him. In the course of the execution of the work, a workman in the plaintiff's employment was injured through the negligence of a workman in the defendant's employment. He sued the plaintiff, who compounded the action by paying him £125. It appearing that there had been no negligence on the part of the plaintiff, and that, consequently, he had been under no liability for the injury to his workman: *Held*, that he could only recover nominal damages from the defendant.—*Kiddle* v. *Lovett*, L.R. 16 Q.B.D. 605.

(viii.) **Ch. D.**—*Conversion of Goods by Consignee who refuses to accept Bill of Exchange accompanying Bill of Lading—Measure of Damages.*—A consignee of goods, while refusing to accept a bill of exchange forwarded to him for acceptance along with the shipping documents relating to the goods, retained the shipping documents and made use of them to obtain possession of the goods. *Held*, that the measure of damages, in an action brought against him for such conversion, was the value of the goods, less the amount which he had paid for freight.—*Rew* v. *Payne*, 53 L.T. 932.

(i.) C. A.—*Waste—Measure of Damages.*—In an action for waste, brought by a reversioner against a tenant, the true measure of damages is not the amount which it would cost to put the property in the same condition as at first, but the injury done to the reversion.—*Whitham* v. *Kershaw*, L.R. 16 Q.B.D. 618; 54 L.T. 124; 34 W.R. 340.

And see Lands Clauses Act, p. 83, iv.

Design:—

(ii.) Ch. D.—*Registration—"Proprietor"—Patents, Designs and Trade-marks Act*, 1883, *s.* 61.—A foreign manufacturer's sole agent for sale in this country, whom his principal has authorized to register in this country in his own name a design according to which the principal manufactures articles of commerce, is not a proprietor of the design within the above section so as to be entitled to registration.—*Re Guiterman's Registered Designs*, 55 L.J. Ch. 309.

Easement:—

(iii.) C. A.—*Ancient Lights—Rebuilding of Premises—Advancement of Wall.*—Decision of Ch. D. (*see* Vol. 11, 39, iii.) affirmed.—*Scott* v. *Pape*, 34 W.R. 465.

(iv.) Ch. D.—*Light and Air—Right of Way—2 & 3 Will. IV., c.* 71, *ss.* 2, 3, 8—"*Building.*"—A mere timber stage, without windows, used for storing timber and exhibiting it to customers: *Held*, not a building in respect of which an easement of light could be acquired under s. 3 of the Prescription Act.—Motion by a tenant for an *interim* injunction to restrain another tenant holding under the same landlord from interfering with a right of way claimed by the former tenant in respect of a "traveller" running along the top of a timber stage so as to project over a portion of the latter tenant's premises, refused in the absence of the reversioner as a party.—It requires a strong case for the Court to grant an injunction in respect of an easement of air.—*Harris* v. *De Pinna*, 54 L.T. 39.

Election:—

(v.) Q. B. D.—*Municipal Election—Validity of Voting Papers—Municipal Corporations Act*, 1882, *s.* 60, *sub-ss.* 2, 4; *s.* 225.—At an election of aldermen the voting-papers used did not contain the descriptions or places of abode of the candidates, and were not signed by the voters, or personally delivered to the chairman. Rule absolute in the first instance for a *mandamus* to hold a fresh election.—*R.* v. *Mayor &c. of Wilton*, 34 W.R. 273.

And see Will, p. 100, iv.; 102, iii.

Estoppel:—

(vi.) Ch. D.—*Rectification of Agreement upon which Action has been Brought.*—An action may be brought for the rectification of an agreement upon the construction of which the Court has already adjudicated.—*Caird* v. *Moss*, 34 W.R. 485.

And see Company, p. 76, vi.

Evidence:—

(vii.) H. L.—*Legitimacy—Statement by Husband or Wife as to Paternity of Child.*—Although a parent cannot give evidence to bastardize his child, yet, where the legitimacy of a child born during marriage is in issue, conduct of the husband or wife which tends to throw light upon the question may be proved; and letters of the wife which shew that she has treated the child as illegitimate are not to be excluded from such proof by reason of their containing allegations of the child's illegitimacy.—*The Aylesford Peerage*, L.R. 11 App. Cas. 1.

(i.) **Ch. D.**—*Production of cestui que vie—6 Anne, c. 18.*—Any person having an interest in land determinable upon the life of another may be ordered to produce *cestui que vie.*—*Re Stevens*, L.R. 31 Ch. D. 320; 54 L.T. 80; 34 W.R. 268.

And see Bankruptcy, p. 73, ii. Highway, p. 81, iv. Practice, p. 90, vi. Will, p. 101, iii.; 102, v.

Executor.—*See* Administration, p. 71, iii. Will, p. 101, v.

Fraud.—*See* Practice, p. 89, vi.; 92, i.

Friendly Society.—*See* Company, p. 76, v.

Guarantee:—

(ii.) **C. A.**—*Death of Co-Guarantor—Liability of Survivors.*—Decision of Ch. D. (*see* Vol. **10**, p. 99, iv.) affirmed on other grounds.—*Ashby v. Day*, 34 W.R. 312.

Highway:—

(iii.) **N. P.**—*Nuisance—Act of Third Person in Possession of Highway—15 & 16 Vict., c. cxvi., ss. 4, 102—25 & 26 Vict., c. ccxxiii., ss. 198, 199—33 & 34 Vict., c. 78, ss. 26, 29, 55, 62.*—By a private Act of Parliament a quay, over which there was a public right of way, was vested in the defendants, and they were bound to keep it in good order and repair. By another private Act the G. E. R. Co. were bound to maintain a tramway, which belonged to them, on the quay in question, in good and efficient working condition. Through the defective state of the road, due to the negligence of the railway company in repairing the tramway, the plaintiff sustained personal injuries, while driving along the quay. *Held*, that the defendants were not liable to compensate him.—*Barham v. The Ipswich Dock Commissioners*, 54 L.T. 23.

(iv.) **Q. B. D.**—*Summary Proceedings for Non-repair—Admission by Waywarden—5 & 6 Will. IV., c. 50—25 & 26 Vict., c. 61—41 & 42 Vict., c. 77.*—Upon a summons under 25 & 26 Vict., c. 61, s. 18, against a waywarden of a parish and a highway board of whose district the parish forms part, an admission of liability by the waywarden is conclusive against the board, notwithstanding s. 10 of the Highways and Locomotives Amendment Act, 1878.—*Loughborough Highway Board v. Curzon*, L.R. 16 Q.B.D. 565; 54 L.T. 168; 34 W.R. 349.

And see Criminal Law, p. 79, ii.

Husband and Wife:—

(v.) **C. A.**—*Agreement with a View to Separation—Effect of Reconciliation.*—Decision of Ch. D. (*see* Vol. **11**, p. 10, iii.) affirmed.—*Nicol v. Nicol*, 34 W.R. 283.

(vi.) **P.D.**—*Divorce—Affidavit Verifying Petition.*—The Court will not allow the affidavit verifying a petition for divorce to be sworn by another person than the petitioner, when the latter is absent from the country of his own accord.—*E. p. Tartt*, 34 W.R. 368.

(vii.) **P. D.**—*Divorce—Death of Petitioner before Decree Absolute.*—A husband who had obtained a decree *nisi* for the dissolution of his marriage on the ground of his wife's adultery died, before the time arrived, when the decree could be made absolute. *Held*, that the suit came to an end by his death.—*Stanhope v. Stanhope*, 34 W.R. 446.

(i.) **Ch. D.**—*Marriage before the Married Women's Property Act*, 1870—*Earnings of Wife—M. P. A.*, 1870, *s.* 1.—A lady carried on the business of a school in her own name, both before her marriage, which took place in 1862, and during her marriage, and after her husband's death, which happened in 1877. Her marriage settlement contained no reference to the school. Her husband never took part in the conduct of the school, or by any act of his treated the school as his property. *Held*, that the goodwill, stock and effects of the business belonged to the wife under the above section.—*Re Dearmer; James* v. *Dearmer*, 53 L.T. 905.

(ii.) **Q. B. D.**—*M. P. A.*, 1882, *s.* 19.—The enactment in s. 19 of the Married Women's Property Act, 1882, that "no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors," relates to future settlements and agreements for settlement.—*Smith* v. *Whitlock*, 34 W.R. 414.

(iii.) **P. D. & C. A.**—*Nullity of Marriage—Maintenance of Child.*—The Court has power to insert in a final decree of nullity of marriage a provision for the maintenance of children born during the cohabitation.—*Langworthy* v. *Langworthy*, 34 W.R. 276; affirmed *ib.* 356.

(iv.) **Ch. D.**—*Power of Court to Bind Interest of Married Woman—Conveyancing Act*, 1881, *s.* 39.—The Court will not remove a restraint upon anticipation, if, by so doing, it may cause an act of forfeiture.—*Re Gordon; King (or Kino)* v. *Picard*, 54 L.T. 127; 34 W.R. 270.

(v.) **C. A.**—*Restraint upon Anticipation—Costs.*—Decision of Ch. D. (*see* Vol. **11**, p. 41, vi.) reversed.—*Re Glanville; Ellis* v. *Johnson*, 34 W.R. 309.

(vi.) **C. A.**—*Reversionary Interest of Wife—Married Women's Property Act*, 1882, *s.* 5.—The above Act does not cause property to which a married woman became entitled in reversion before the commencement of the Act to enure to her separate use upon its falling into possession after the commencement of the Act.—*Baynton* v. *Collins* (*see* Vol. **10**, p. 42, ix.) overruled.—*Reid* v. *Reid*, L.R. 31 Ch. D. 402; 55 L.J. Ch. 294; 54 L.T. 100; 34 W.R. 332.

And see Bill of Sale, p. 73, vi. Settlement, p. 95, ii. Trustee, p. 98, vii.

Indemnity :—*See* Mortgage, p. 86, ii.

Insurance :—

(vii.) **C. A.**—*Life Insurance—Statements in Proposal—Subsequent Change of Circumstances.*—Statements made by a person in a proposal for a life assurance must be true at the time when the contract of assurance is actually made.—*Canning* v. *Farquhar*, 34 W.R. 423.

Interpleader :—

(viii.) **Q. B. D.**—*Appeal—Common Law Procedure Act*, 1860, *s.* 17—*R. S. C.*, 1883, *O.* liv., *r.* 12; *O.* lvii., *rr.* 8, 11.—Where a master at chambers has summarily decided an interpleader matter, but given leave to appeal to the judge, the judge has jurisdiction to entertain such appeal.—*Webb* v. *Shaw*, L.R. 16 Q.B.D. 658; 54 L.T. 216; 34 W.R. 415.

And see Practice, p. 92, iv.

Justice of the Peace :—*See* Public Health Act, p. 94, i., iii. Tramway.

Landlord and Tenant:—

(i.) **Q. B. D.**—*Mortgagor in Possession—Right to Distrain.*—A mortgagor left in possession by the mortgagee has *primâ facie* a right to distrain upon the mortgaged premises for rent due; and he may exercise such right in his own name.—*Reece* v. *Strousberg*, 54 L.T 133.

(ii.) **Ch. D.**—*R. S. C.*, 1883, *O.* xii., *rr.* 25 *et seq.*—By an order made in the liquidation of the Royal Italian Opera Company the lease of Her Majesty's Theatre and the goods and chattels of the company were assigned to T., the owner of the reversion of the theatre. *Held*, that T.'s assignee of the theatre was not entitled to exclude a lessee of "property" boxes and stalls from access to his stalls and boxes.—*Leader* v. *Hayes*, 54 L.T. 204.

And see Apportionment. Bankruptcy, p. 72, v.

Lands Clauses Act:—

(iii.) **C. A.**—*Compulsory Purchase—Payment out of Court—Costs.*—Where payment into Court has been made of the purchase-money of land taken under an act passed subsequently to the L. C. C. A., 1845, and containing no provision as to the costs of an application for payment of purchase-moneys out of Court, an order for payment of such costs may be made under the latter act against the party by whom the land was taken.—*Re Wood's estate*, 54 L.T. 145; 34 W.R. 375.

(iv.) **C. A.**—*Property Injuriously Affected—Measure of Damages.*—Decision of Q. B. D (*see* Vol. 10, p. 36, ii) affirmed.—*Re Wadham and N. E. R. Co.*, L.R. 16 Q.B.D. 227; 34 W.R. 342.

And see Railway, p. 94, v.

Licence:—

(v.) **Q. B. D.**—*Conviction of Occupier—Appeal by Owner—Licensing Act*, 1872, *s.* 52.—The owner of licensed premises, as distinguished from the occupier, is not a "person aggrieved," within the above section.—*R.* v. *Justices of Andover*, 34 W.R. 456.

And see Revenue, p. 94, viii.

Limitation of Actions:—

(vi.) **Q. B. D.**—*Negligence—Fraudulent Concealment*—21 *Jac. I.*, *c.* 16, *s.* 3.—Where, in an action against a solicitor for negligence, the Statute of Limitations is pleaded, a reply stating that, owing to the active and deliberate fraud of the defendant, the plaintiff did not discover, and had not the means of discovering, the defendant's negligence, until six years next before the action was brought, is no answer to the plea of the statute.—*Armstrong* v. *Milburn*, 54 L.T. 247.

Local Government:—

(vii.) **C. A.**—*Paving Expenses—Omission of Notice to Frontagers to Pave.*—The plaintiffs claimed a declaration that the expenses incurred by them in paving certain streets should be charged, under s. 62 of the Local Government Act, 1858,* upon the property of the defendants. *Held*, that service of notice under s. 69 of that Act† was a condition precedent to the defendants' liability.—*Yarmouth Local Board* v. *Compton*, 34 W.R 334.

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* To which s. 150 of the Public Health Act, 1875, now corresponds.
† To which s. 257 of the P. H. A., 1875, corresponds.

(i.) **N. P.**—32 & 33 *Vict.*, c. 120, ss. 4, 98, 99—"*Owner.*"—An agent employed to collect the rents of property fronting upon a new street may be charged as owner under the above Act with paving &c. expenses, although not such agent at the time when the apportionment was made.—*Mayor of St. Helen's* v. *Kirkham*, L.R. 16 Q.B.D. 403; 34 W.R. 440.

And see Metropolis Management, Public Health Act.

Lunatic:—

(ii.) **C. A.**—*Power—Consent to Exercise of Power—Lunacy Regulation Act*, 1853.—A marriage settlement contained a power of advancement exercisable by the trustees at any time after the decease of the husband and wife, or at any time previously, in case the husband and wife or the survivor should direct. The husband was found lunatic. *Held*, that the Court had jurisdiction, under the above section, to authorize the committee of his estate to consent, on his behalf, to the exercise of the power.—*Re Nevill, a lunatic*, L.R. 31 Ch. D. 161.

(iii.) **C. A.**—*Practice—New Trustees—Consent to Act—Verification—R. S. C., O.* xlix., *r.* 4a.—The rules of December, 1885, do not apply to proceedings in Lunacy; and, therefore, when a petition for the appointment of new trustees is presented in Lunacy, the consent of the new trustees to act must still be verified by affidavit.—*Re Wilson; re Needham*, 53 L.T. 263.

And see Trustee, p. 99, i.

Mandamus.—*See* Election.

Market:—

(iv.) **H. L.**—*Franchise—Land not belonging to Grantee—Prescription.*—Decision of C. A. (*see* Vol. **10**, p. 42, iv.) affirmed.—*A.-G.* v. *Horner*, L.R. 11 App. Cas. 66; 55 L.J. Q.B. 193.

(v.) **Q. B. D.**—*Regulations—Restraint of Trade.*—A by-law for the regulation of a market, setting apart a place for the sale of vegetables wholesale, and another place for the sale of vegetables by retail: *Held*, reasonable.—*Strike* v. *Collins*, 34 W.R. 459.

(vi.) **C. A.**—*Rights—Approaches.*—Decision of Ch. D. (*see* Vol. **10**, p. 42, v.) affirmed.—*Horner* v. *Whitechapel Board of Works*, 55 L.J. Ch. 289; 53 L.T. 842.

(vii.) **Q. B. D.**—*Rochdale Market Act*, 1822, *s.* 42—*Rochdale Improvement Act*, 1872, *s.* 8—"*Town.*"—The prohibition contained in s. 42 of 3 Geo. IV., c. lviii., is not limited to the town of Rochdale as it existed in 1822: that Act is made applicable by 35 & 36 Vict., c. 149, to the whole municipal borough constituted by the latter Act.—*Killmister* v. *Fitton*, 53 L.T. 959.

Master and Servant:—

(viii.) **N. P.**—*Confidential Clerk—Ground for Dismissal.*—A merchant engaged in bringing out foreign loans and dealing with foreign securities is justified in dismissing his principal and confidential clerk for secretly, extensively and continuously speculating in differences on the Stock Exchange.—*Pearce* v. *Foster*, 55 L.J. Q.B. 121; 53 L.T. 867.

(ix.) **Q. B. D.**—*Employers' Liability Act*, 1880, *s.* 1, *sub-s.* 1; *s.* 2, *sub-s.* 3.—The defence of contributory negligence is still open to an employer.—*Weblin* v. *Ballard*, 34 W.R. 455.

(i.) **Q. B. D.**—*Workman Employed by Butty—Employers' Liability Act, 1880, s. 1, sub-s. 3.*—A miner employed by a butty in a mine worked upon the butty system is a workman in the employment of the owner of the mine, within the above sub-section.—*Brown* v. *Butterley Coal Co.*, 53 L.T. 964.

And see Damages, p. 79, vii.

Metropolis Management :—

(ii.) **C. A.**—*Sewers—Expense of Construction—Metropolis Management Act, 1862, ss. 53, 112—"Street."*—"Street" in the 53rd section of the above Act includes "new streets," as defined by s. 112, as well as old streets.—*St. John, Hampstead, Vestry* v. *Cotton*, L.R. 16 Q.B.D. 475; 34 W.R. 244.

And see Waterworks.

Mine :—

(iii.) **Q. B. D.**—*Coal Mines Regulation Act*, 1872, *s.* 52.—The words "so far as is reasonably practicable," used in the above section with reference to the observance of the general rules applicable to mines to which the Act applies, mean "so far as is reasonably practicable, having regard to physical or engineering difficulties in the way of carrying out the rules," and not "so far as is reasonably practicable, having regard to the carrying on of the mine as a profitable concern;" and the words "part of the mine" in the prohibition to use gunpowder in a mine, under certain circumstances, except when the persons ordinarily employed in the mine are "out of the part of the mine where it is used," refer to such a part of the mine as can be treated as a separate mine under the statute. — *Wales* v. *Thomas*, L.R. 16 Q.B.D. 340; 55 L.J. M.C. 57.

Mortgage :—

(iv.) **Ch. D.**—*Foreclosure—Costs of Mortgagee.*—Taxation in a foreclosure action brought by an equitable mortgagee. An order had been made by consent, dismissing the action on payment to the plaintiff of the agreed amount of his principal and interest, and taxed costs, including charges and expenses properly incurred by him as mortgagee. Costs of a judgment for the amount of the debt, and of communicating with a surety of the debt: *Held*, rightly allowed. *Secus*, costs of preparing a legal mortgage of the property.—*National Provincial Bank* v. *Games*, 53 L.T. 955.

(v.) **Ch. D.**—*Foreclosure—Receipt of Rents by Receiver after Certificate—Order Absolute.*—Foreclosure action. A receiver had been appointed, and the ordinary foreclosure order made. Between the date of the certificate and the day fixed for redemption the receiver received rents. *Held*, that the receiver must pass his accounts, and a fresh account be taken, before the order could be made absolute. — *Jenner-Fust* v. *Needham*, L.R. 31 Ch. D. 500; 34 W.R. 409; followed: *Peat* v. *Nicholson*, 34 W.R. 451; not followed: *Hoare* v. *Stephens*, 54 L.T. 230; 34 W.R. 410.

(vi.) **C. A.**—*Foreclosure—Two Estates—Redemption—Costs—Conveyancing and Law of Property Act*, 1881, *s.* 17.—Foreclosure action. The mortgage-deed included two properties, a portion of the amount advanced being attributed to each: *Held* (1), that the mortgagor was entitled to redeem the properties separately; (2), that the costs of the action were to be apportioned between the two properties.—*De Caux* v. *Skipper*, 34 W.R. 402.

(i.) **C. A.**—*Mortgagee in Possession—Mortgage of two Estates—Sale of part of One—Purchase-money paid, part in Reduction of Mortgage, part to one Mortgagor—Claim of other Mortgagor against Mortgagees.* —When mortgagees receive rents and profits, the question whether they are mortgagees in possession depends on whether they have taken out of the mortgagor's hands the power and duty of managing the estate and collecting the rents.—A married woman, who had a charge on settled estates for her jointure, joined in a mortgage by her husband of the settled estates and of other estates, of which he was the absolute owner. The husband subsequently sold part of the unsettled estates, the mortgagees concurring in the sale; and the purchase-money was paid, partly to him and partly in reduction of the mortgage. *Held*, that the wife could not charge the mortgagees with the sum paid to her husband.—*Noyes* v. *Pollock*, 34 W.R. 383.

(ii.) **C. A.**—*Postponement of Charge by Second Mortgagee at Request of Mortgagor—Implied Promise of Indemnity.*—A second mortgagee, at the request of the mortgagor, executed a deed giving priority over his charge to a third mortgage, and also a further charge, in favour of the first mortgagee. The deed contained no provision as to indemnity. The proceeds of the sale of the property proved insufficient to pay the first mortgagee. *Held*, that a promise to indemnify was to be implied, and that, consequently, the second mortgagee might prove in the mortgagor's bankruptcy in respect of the loss which he had sustained by the postponement of his charge.—*E. p. Ford; re Chappell*, L.R. 16 Q.B.D. 305.

(iii.) **Ch. D.**—*Priority—Solicitor—Notice—Conveyancing Act*, 1882, *s.* 3.—B. was solicitor to C. and acted in that capacity in a mortgage by C. to D. of the former's share in a trust fund. D. transferred his mortgage to E., and in that transaction B. acted as E.'s solicitor. Subsequently C. mortgaged the same share to F. by a deed which contained no reference to the prior incumbrance, B. acting as solicitor for F. F. gave notice to the trustees of the fund before E. *Held*, that F. had priority over E.—*Re Cousins' Trusts*, 34 W.R. 393.

And see Landlord and Tenant, p. 83, i. Priority.

Nuisance.—*See* Public Health Act, p. 94, iii. Railway, p. 94, iv.

Parliament :—

(iv.) **Q. B. D.**—*Election—Payment of Disputed Claims—Corrupt and Illegal Practices Prevention Act*, 1883, *s.* 29, *sub-s.* 9.—The Court will not grant leave, under the above sub-section, to pay a "disputed claim," unless notice of the application for leave has been given to the opposing candidate, to the returning officer and to the constituency at large.—*Re the Parliamentary Election for the Southern or Ludlow Division of Salop*, 52 L.T. 129.

Partnership :—

(v.) **N. P.**—*Contribution Between Joint Adventurers—Judicature Act*, 1873, *s.* 25, *sub-s.* 11.—The plaintiffs, the defendants and L. B. & Co. jointly purchased wheat for re-sale and division of profits, the price to be paid in the first instance by the plaintiffs. The plaintiffs paid the price accordingly. The re-sale resulted in a loss. L. B. & Co. having become insolvent: *Held*, that the defendants were liable to contribute to the plaintiffs in respect of L. B. & Co.'s share.—*Lowe* v. *Dixon*, L.R. 16 Q.B.D. 455; 34 W.R. 441.

(i.) **Ch. D.**—*Solicitors—Retired Partner Acting as Partner—Fraud of Continuing Partner—Liability of Retired Partner.*—After retiring from a firm of solicitors, H., who, while a partner, had attended to a certain trust, wrote, from the office of the firm, asking the trustees to sign a power of attorney to "our brokers" to sell some stock, part of the trust funds, and requesting them to send the power, when signed, to the office of the firm. The trustees did as requested; the stock was sold; and H.'s late partners received, and misappropriated, the proceeds. The tenant for life knew, but the trustees did not, that H. had retired from the firm. *Held*, that H. must make good the capital lost to the trust, with interest from the last day to which interest was paid.—*Slack* v. *Parker*, 54 L.T. 212.

And see Criminal Law, p. 79, i.

Partition.—*See* Practice, p. 90, vi.

Patent:—

(ii.) **Ch. D.**—*Patents, Designs and Trade-marks Act*, 1883, *s.* 32.—A letter giving notice to a person that he was infringing a patent, and that, unless he forthwith discontinued such infringement, legal proceedings would be taken in order to compel him to do so: *Held*, a threat "by circular, advertisement or otherwise," within the above section.—*Driffield &c. Pure Linseed Cake Co.* v. *Waterloo Mills Cake &c. Co.*, 54 L.T 210; 34 W.R. 360.

(iii.) **Ch. D.**—*Prior Publication—Foreign Treatise in British Museum.*—The defendant in an action to restrain the infringement of a patent, granted in 1876, pleaded want of novelty, relying upon the publication, in this country, of a certain French treatise printed in Paris. The evidence was that there was a copy of the French treatise in question in the inner library of the British Museum, which had bought it in 1863; that at the British Museum books were catalogued according to the authors' names, but arranged upon the shelves according to the subjects; and that readers at the Museum could sometimes obtain access to the inner library. *Held*, that the French treatise had not been published in this country in such a way that its contents had become part of the common stock of knowledge here.—*Otto* v. *Steel*, L.R. 21 Ch. D. 241; 55 L.J. Ch. 196; 54 L.T. 157; 34 W.R. 289.

And see Practice, p. 90, vii.

Perpetuity:—

(iv.) **Ch. D.**—*Rule against Perpetuities—Covenant to Reconvey at any Time during the Continuance of a Settlement.*—Covenant by a purchaser, the tenant for life under a strict settlement, with the vendors, the trustees of the settlement, to reconvey to them, if they should require him to do so, at any time during the continuance of the settlement: *Held*, void as tending to a perpetuity.—*Trevelyan* v. *Trevelyan*, 53 L.T. 853.

Poor Rate:—

(v.) **Q. B. D.**—*Berwick-upon-Tweed Harbour Acts*, 1862 & 1872—*Duty Comprising Harbour Duty and Additional Duty for use of Wet Dock—Rateability.*—In the assessment of the Berwick Harbour Commissioners to the poor-rate in respect of their dock buildings and plant the tonnage and harbour duties (other than the additional dues payable by vessels entering the dock) received by them under the Harbour Act, 1872, are not to be taken into account, the dock not being the meritorious cause of those duties.—*R.* v. *Berwick Assessment Committee* (*Berwick Harbour Commissioners* v. *Tweedmouth Overseers*), L.R. 16 Q.B.D. 493; 54 L.T. 159.

(i.) **Q. B. D.**—*Fishery—Rateable Value—Parochial Assessment Act*, 1836, *s.* 1.—The appellant paid, in respect of his salmon fishery in the Tweed, a tax levied under an Act passed for the preservation of the salmon in that river. *Held*, that the amount of such tax was an expense necessary to maintain the fishery in a state to command the rent at which it might reasonably be expected to let from year to year; and that, therefore, in being assessed to the poor-rate in respect of the fishery, the appellant was entitled to have the amount of the tax deducted from the gross rateable value of the fishery.—*R.* v. *Smith*, 55 L.J. M.C. 49.

(ii.) **Q. B. D.**—*Premises Purchased by Postmaster-General—Underlease—Rateable Value—Telegraph Act*, 1868, *s.* 22.—*Held*, that, under the above section, a portion of premises acquired by the Postmaster-General under the above Act, which was held upon underlease from the Postmaster-General, could not be rated at an amount exceeding that at which it was properly rated, when the Postmaster-General acquired the premises, although no part of the premises was any longer used or occupied for telegraphic purposes.—*St. Gabriel, Fenchurch, Overseers* v. *Williams*, L.R. 16 Q.B.D. 649; 55 L.J. M.C. 14; 54 L.T. 270; 34 W.R. 256.

(iii.) **Q. B. D.**—*School Board Premises.*—Where the School Board are occupiers and owners too, fair interest on the cost of their land and buildings supplies a rough test of the value of their occupation; where they are occupiers, but not owners, the rent which they pay may be taken as such test.—*R.* v. *London School Board*, 55 L.J. M.C. 33.

(iv.) **C. A.**—*Waterworks—Deduction in Respect of Capital—Deduction in Respect of Rates.*—The works of a water company, which extended through a number of parishes, including W., were largely in excess of the company's existing requirements; but every part of them was used for the purpose of distributing the water as a source of profit. *Held*, that, in estimating the rateable value of the company's property in W., the overseers ought, as regards the deduction to be made from the net annual profits in respect of capital outlay, to take into account the whole of the works, and not only so much as would be sufficient for the actual supply of water; but that they must also take into account the circumstance that, by reason of a part of the capital outlay having been made in anticipation of future requirements, a person taking to the whole concern as tenant from year to year would not be willing to pay a rent representing the whole of the capital expenditure. *Held*, also, that the deduction for rates must be made in respect of the real rateable value of the property, and not in respect of the value upon which the property was actually assessed.—*R.* v. *South Staffordshire Waterworks Co.*, L.R. 16 Q.B.D. 359; 34 W.R. 242.

(v.) **Q. B. D.**—*Waterworks—Water-Rates in aid of Water-Rents—Rateability—Deductions for Repairs—Rateable Value of Works.*—A waterworks company were empowered by their special Act to levy a water-rate, but only when the amount received from their water-rents should be insufficient to cover all their outgoings. *Held*, that, in ascertaining the net rateable value of their property, the amount collected by means of the water-rate was to be taken into account.—One *per cent.* on the cost of the company's property subject to depreciation: *Held*, a proper deduction to be made from income in respect of the "probable average cost of repairs."—*Held*, also, that the adequate remuneration to a contractor for erecting the company's works was not the true measure of the net rateable value of the works.—*Dewsbury and Heckmondwike Waterworks Board* v. *Penistone Union Assessment Committee*, L.R. 16 Q.B.D. 585; 55 L.J. M.C. 28.

Power.—*See* Lunatic, p. 84, ii. Will, p. 102, i.

Practice:—

(i.) **Q. B. D. & C. A.**—*Amendment of Pleading.*—In April, 1885, the plaintiff delivered his statement of claim, claiming damages for negligence, and the defendants delivered their statement of defence, denying negligence. In November, 1885, the defendants applied for leave to amend their statement of defence by pleading that, under an agreement between themselves and the vestry, the latter were the proper party to be sued. By that time, the plaintiff, not having sued the vestry within the statutory six months, had lost his remedy, if any, against that body. *Held*, that leave to amend the statement of defence had been properly refused.—*Steward* v. *North Metropolitan Tramways Co.*, L.R. 16 Q.B.D. 178; affirmed: L.R. 16 Q.B.D. 556; 55 L.J. Q.B. 157; 54 L.T. 35; 34 W.R. 317.

(ii.) **C. A.**—*Appeal—Originating Summons—R. S. C.*, 1883, *O.* lviii., *r.* 15.—An originating summons under O. lv., r. 3, is an action within the meaning of s. 100 of the Judicature Act, 1873; and, therefore, an appeal from an order made on such a summons need not be brought within 21 days.—*Re Vardon's trusts* (2), 55 L.J. Ch. 259.

(iii.) **Ch. D.**—*Costs—Taxation—Fees of three Counsel.*—During the trial of an action the second in seniority of the plaintiff's three counsel was called within the bar. The trial lasted eight days. Judgment was given for the plaintiff, with costs. The taxing-master disallowed the costs of the plaintiff's leader, on the ground that the number of witnesses, viz., six, was not sufficient to justify the allowance, as between party and party, of the fees of three counsel. It not being shewn that it was necessary for the purpose of doing justice between the parties that three counsel should be employed by the plaintiff, the Court refused to interfere with the taxing-master's exercise of his discretion.—*Parish* v. *Poole*, 34 W.R. 365.

(iv.) **Q. B. D.**—*Discovery—Inspection of Copies of Documents—Privilege.*—Copies of documents, made after action brought, are not privileged against inspection, if the originals would not be so privileged.—*Chadwick* v. *Bowman*, L.R. 16 Q.B.D. 561; 54 L.T. 16.

(v.) **C. A.**—*Discovery—Interrogatories—Action by Common Informer—R. S. C.*, 1883, *O.* xxxi., *r.* 1.—In the absence of exceptional circumstances, a common informer will not be allowed, in an action for penalties, to administer interrogatories, in order to enable himself to maintain such action.—*Martin* v. *Treacher*, L.R. 16 Q.B.D. 507; 54 L.T. 7; 34 W.R. 315.

(vi.) **C. A.**—*Discovery—Principal and Agent—General Allegation of Fraud—Interrogatories.*—The generality of an allegation of fraud contained in the statement of claim in an action brought by a principal against his agent is no bar to the plaintiff's right to administer interrogatories asking for particulars of the dealings in respect of which the defendant has charged him in account.—*Leitch* v. *Abbott*, L.R. 31 Ch. D. 374; 54 L.T. 258.

(vii.) **Q. B. D.**—*Discovery—Security for Costs—R. S. C.*, 1883, *O.* xxxi., *rr.* 25, 26.—A judge has no discretion to dispense with the deposit which the above order requires a party seeking discovery to make.—*Boarder* v. *Lindsay*, 34 W.R. 473.

(viii.) **C. A.**—*Discovery—Sufficient Affidavit of Documents—Interrogatories.*—The general rule is that an affidavit of documents is conclusive, if sufficient; but, if some ground is shewn for supposing that the affidavit is untrustworthy, interrogatories as to documents may be allowed.—*Nicholls* v. *Wheeler*, 34 W.R. 425.

(i.) **C. A.**—*Dismissal of Frivolous and Vexatious Action*—*R. S. C.*, 1883, *O.* xxv., *r.* 4—*Action to Revoke Letters of Administration.*—The above rule only applies where it appears on the face of the pleadings that the action is frivolous and vexatious; but in every Court there is inherent a power to prevent the abuse of its process.—Letters of administration confer no power upon the executors of the administrator, and will not, therefore, be recalled after his death.—*Willis* v. *Earl Beauchamp*, 54 L.T. 185; 34 W.R. 357.

(ii.) **C. A.**—*Dismissing Frivolous Action*—*R. S. C.*, 1883, *O.* xxv., *r.* 4.—The Court has jurisdiction to dismiss an action as frivolous, although the statement of defence has been delivered.—*Tucker* v. *Collinson*, 54 L.T. 263; 34 W.R. 354.

(iii.) **Q. B. D.**—*Joinder of Parties*—*R. S. C.*, 1883, *O.* xvi., *r.* 11.—The above rule gives the Court a discretion as to the amendment of pleadings by reason of the misjoinder or non-joinder of parties.—*Leduc* v. *Ward*, 54 L.T. 214.

(iv.) **Q. B. D.**—*Joinder of Parties*—*R. S. C.*, 1883, *O.* xvi., *rr.* 2, 11.—The combined effect of the above rules is that a person cannot be added as plaintiff without his consent in writing.—*Tryon* v. *National Provident Institution*, 54 L.T. 167; 34 W.R. 398.

(v.) **Ch. D.**—*Misjoinder of Parties*—*R. S. C.*, 1883, *O.* xxv., *r.* 4.—Action by a builder. The plaintiff joined the architect of the defendant company as a defendant, but the statement of claim disclosed no cause of action against him. *Held*, that, as against the architect, the action must be dismissed with costs.—*Amos* v. *Herne Bay Pavilion Promenade and Pier Co.*, 54 L.T. 264.

(vi.) **Ch. D.**—*Motion for Judgment in Default of Pleading*—*Infant Defendants*—*Partition Action*—*Evidence.*—Upon motion by the plaintiffs for judgment in default of pleading, in a partition action in which some of the defendants were infants: *Held*, not necessary that there should be an affidavit verifying the allegations in the statement of claim.—*Ripley* v. *Sawyer*, L.R. 31 Ch. D. 494; 34 W.R. 270.

(vii.) **C. A.**—*Motion for Judgment on Admissions in the Pleadings*—*Inquiry as to Damages*—*R. S. C.*, 1883, *O.* xxxii., *r.* 6.—The statement of defence in an action for infringement of a patent admitted certain instances of infringement, but denied all others. The plaintiff moved for judgment on the admissions in the pleadings. *Held*, that he was entitled to an inquiry as to damages in respect only of the admitted instances of infringement.—*United Telephone Co.* v. *Donohoe*, L R. 31 Ch. D. 399; 54 L.T. 34; 34 W.R. 326.

(viii.) **Ch. D.**—*Order by Consent.*—A consent order not sanctioned by the Court should appear on the face of it to be a consent order.—*Michel* v. *Mutch*, 54 L.T. 45; 34 W.R. 251.

(ix.) **C. A.**—*Order by Judge in Chambers*—*Motion to Vary*—*Time*—*Judicature Act*, 1873, *s.* 50—*R. S. C.*, 1883, *O.* lviii., *r.* 15.—Order, made, upon an application by the defendant in an administration action, in chambers by the Judge himself, directing taxation of the costs of all parties and payment of those costs and of moneys due to creditors out of a fund in Court, and giving liberty to apply as to an outstanding asset and generally: *Held*, an interlocutory order.—*Re Lewis; Lewis* v. *Lewis*, 54 L.T. 198; 34 W.R. 420.

(x.) **Ch. D.**—*Order upon Admissions*—*R. S. C.*, 1883, *O.* xxxii., *r.* 6.—Application under the above rule for an order for payment by the defendant to the plaintiff of a sum of money. The writ was not specially indorsed

No pleadings had been delivered. The debt had been admitted in an affidavit filed in a previous interlocutory proceeding in the same cause. Payment into Court ordered.—*Landergan* v. *Feast*, 34 W.R. 369.

(i.) **N. P.**—*Order of High Court for Payment of Costs—Power of County Court to Order Payment by Instalments—Debtors Act*, 1869, *s.* 5—*Bankruptcy Act*, 1883, *s.* 103, *sub-s.* 4—*County Courts Consolidated Orders*, 1875, *Ord.* 19, *r.* 9; *Forms* 40, 235 (-*County Court Rules*, 1886, *Ord.* 25, *r.* 17; *Forms* 53, 54).—Where a Court of competent jurisdiction has simply given judgment for the payment of a sum of money, or made an order for the payment of costs, without having before it the question of the debtor's means, a County Court has jurisdiction to make an order for payment by instalments of such sum or costs.—*Re Ives; e. p. Addington*, L.R. 16 Q.B.D. 665.

(ii.) **Ch. D.**—*Originating Summons—Jurisdiction—R. S. C.*, 1883, *O.* lv., *Part* II., *rr.* 3, 8, 10.—The Court has jurisdiction, upon an originating summons, to order payment into Court of moneys which trustees have received and improperly applied.—*Re Chapman; Fardell* v. *Chapman*, 54 L.T. 13.

(iii.) **Ch. D.**—*Originating Summons—Power of Court to direct Sale—R. S. C.*, 1883, *O.* lv., *r.* 3 *(f)*; *O.* li., *r.* 1.—R. 3 (f) of O. lv. refers to a sale &c. which could be made &c. by the executors or trustees of a will or deed; and R. 1 of O. li. to a sale 'necessary or expedient for the purposes of a cause &c. Neither rule empowers the Court to grant all the relief which it could grant in a proceeding under the Partition Act or under the Settled Land Act, 1882.—*Re Robinson; Pickard* v. *Wheater*, L.R. 31 Ch. D. 247; 55 L.J. Ch. 307; 53 L.T. 865.

(iv.) **Q. B. D.**—*Particulars—Reasonable and Probable Cause.*—Action for libel and false imprisonment. Plea of reasonable and probable cause for having believed the plaintiff to be a person of unsound mind. *Held*, that the defendant must give particulars of the reasonable and probable cause.—*Cave* v. *Torre*, 54 L.T. 87.

(v.) **Q. B. D.**—*Particulars—Slander.*—The plaintiff in an action for slander, *ordered*, upon summons before the delivery of the statement of defence, to give the names of the persons to whom the slander was alleged to have been uttered.—*Roselle* v. *Buchanan*, L.R. 16 Q.B.D. 656; 34 W.R. 488.

(vi.) **Q. B. D.**—*Payment into Court—Particulars—R. S. C.*, 1883, *O.* xix., *r.* 7.—The Court will not order a defendant to give particulars of the items of claim in respect of which he pays money into Court, unless the trial of the action will be facilitated, and neither party embarrassed, by such order being made.—*Orient Steam Navigation Co.* v. *Ocean Marine Insurance Co.*, 34 W.R. 412.

(vii.) **Ch. D.**—*Payment out of Court—R. S. C.*, 1883, *O.* lv., *r.* 2, *sub-r.* 1. —Order for payment out of Court of a sum exceeding £1,000, on summons, *refused*.—*Re Rhodes*, L.R. 31 Ch. D. 499; 34 W.R. 270.

(viii.) **C. A.**—*Person suing in Formâ Pauperis—Right to be heard in Person—R. S. C.*, 1883, *O.* xvi, *rr.* 22-30.—A person admitted to sue *in formâ pauperis*, to whom no counsel has been assigned, is entitled to be heard in person.—*Tucker* v. *Collinson*, L.R. 16 Q.B.D. 562; 54 L.T. 263; 34 W.R. 354 (Q. B. D.: 54 L.T. 128; 34 W.R. 323).

(ix.) **Ch. D.**—*Petition—Appointment of New Trustees—Slip—Costs—Trustee Relief Act*, *ss.* 22, 35.—It having been discovered, after an order, made upon petition, appointing new trustees of a will and vesting in them certain property, had been drawn up, passed, and entered, that one part of the trust property had been inadvertently omitted in the order,

and another part, by accident, not mentioned in the petition, a second petition was presented by the same petitioners, asking for an order vesting in the trustees such omitted and unmentioned parts of the property. Order made accordingly; the costs of the application to be paid out of the estate.—*Re Hopper's trusts*, 54 L.T. 267; 34 W.R. 392.

(i.) **Ch. D.**—*Pleading—Allegation of Misrepresentation—R. S. C.*, 1883, *O.* xix., *r.* 6.—Where fraud is alleged, the facts establishing it must be specifically pleaded.—*Symonds* v. *City Bank*, 34 W.R. 364.

(ii.) **Q. B. D.**—*Prohibition—County Court—County Courts Act*, 1856, *s.* 26. —Where the defendant has consented to an order for remittal to the County Court, and has appeared before the County Court judge, a subsequent application by him for a writ of prohibition to prevent the County Court judge from proceeding in the action will be refused, even though there be a counterclaim for unliquidated damages; at any rate, if the counterclaim is not of a nature or for an amount beyond the jurisdiction of a County Court.—*Mouflet* v. *Washburn*, 54 L.T. 16.

(iii.) **Q. B. D.**—*Security for Costs—Counterclaim by Defendant Resident out of Jurisdiction.*—A defendant residing out of the jurisdiction who by counterclaim sets upon an entirely fresh cause of action can be ordered to give security for the costs of his counterclaim.—*Lake* v. *Haseltine*, 55 L.J. Q.B. 205.

(iv.) **C. A.**—*Security for Costs—Interpleader—Insolvent Plaintiff against whom Receiving Order has been made—Bankruptcy Act*, 1883, *ss.* 5 *et. seq.*—*R. S. C.*, 1883, *O.* lvii., *r.* 15.—In considering whether parties to interpleader proceedings shall be required to give security for costs, the Court observes the rules applicable to ordinary litigants; and, in applying those rules, it decides the question whether a party to an interpleader issue shall be treated as a plaintiff or as a defendant by reference to the real merits of the case, and not by the form of the issue —A receiving order is not equivalent to an adjudication in bankruptcy: it does not divest the debtor of his property.—There is no such general rule as that an insolvent plaintiff of whose assets a receiver has been appointed will be ordered to give security for costs.—*Rhodes* v. *Dawson*, L.R. 16 Q.B.D. 548; 55 L.J. Q.B. 134; 34 W.R. 240.

(v.) **Ch. D.**—*Service out of the Jurisdiction—Company—Order for Payment of Calls.*—The Court has no jurisdiction under the Companies Act, 1862, to grant leave to serve a balance order through the post upon a person resident out of the jurisdiction.—*Re Anglo-African SS. Co.*, 34 W.R. 470.

(vi.) **C. A.**—*Service out of the Jurisdiction—Originating Summons—R. S. C.*, 1883, *O.* xi., *r.* 1; *O.* lxvii., *r.* 5; *O.* lxxii., *r.* 2.—The Court has no power to allow an originating summons to be served out of the jurisdiction.—*Re Busfield; Whaley* v. *Busfield*, 54 L.T. 220; 34 W.R. 372.

(vii.) **Q. B. D.**—*Service out of the Jurisdiction—Summons for Taxation—R. S. C.*, 1883, *O.* xi., *r.* 1.—A summons to tax a bill of costs is not a writ of summons of which service out of the jurisdiction may be allowed under the above rule.—*E. p. Brandon; re Bouron*, 54 L.T. 128; 34 W.R. 352.

(viii.) **Ch. D.**—*Special Case—Protection of Trustees—R. S. C.*, 1883, *O.* xxxiv, *r.* 8—13 *&* 14 *Vict.*, *c.* 35, *s.* 15—46 *&* 47 *Vict.*, *c.* 46, *s.* 5.—The above order is to be taken to have incorporated the protecting clauses of Sir George Turner's Act, within the meaning of the Statute Law Revision Act, 1883; so that trustees can safely act upon a declaration contained in an order made upon a special case stated under the above order.—*Forster* v. *Schlesinger*, 54 L.T. 51.

(i.) **C. A.**—*Specially Indorsed Writ—R. S. C.*, 1883, *O.* iii., *r.* 6 (F).—The actions for the recovery of land in which the writ may be specially indorsed under the above rule are actions upon the direct relation of landlord and tenant. The rule does not apply to an action in which the plaintiff claims by devolution of title.—*Casey* v. *Hellyer*, 55 L.J. Q.B. 207; 54 L.T. 103; 34 W.R. 337.

(ii.) **C. A.**—*Specific Performance—Interim Payment into Court.*—L. commenced an action against J. for specific performance of an agreement to take a lease of a coal mine, under which he alleged that a royalty of 10d. a ton was payable to him. J. counter-claimed for specific performance of an agreement by L. to grant a lease of the mine, but alleged that the royalty payable was a smaller sum. J. was in possession of the mine, and actually getting coal. *Held*, that there was jurisdiction to make an order, before the trial of the action, for payment into Court, by J., of a sum in respect of royalties, without giving him the option to give up possession of the mine.—*Lewis* v. *James*, 54 L.T. 260.

(iii.) **Ch. D.**—*Stay of Proceedings.*—When a party prosecuting proceedings is in contempt through not having paid costs, the proceedings will be stayed.—*Re Youngs; Doggett* v. *Revett*, L.R. 31 Ch. D. 239; 54 L.T. 50; 34 W.R. 290; *re Neal; Weston* v. *Neal*, L.R. 31 Ch. D. 437; 54 L.T. 68; 34 W.R. 319.

(iv.) **Q. B. D.**—*Trial—Mode—R. S. C.*, 1883, *O.* xxxvi., *r.* 8.—Where the defendant denies both his liability and the amount of damages, and the latter question is a fit subject for a reference, it is a proper exercise of discretion under the above rule to order the question of liability to be tried separately.—*Smith* v. *Hargrove*, L.R. 16 Q.B.D. 183; 34 W.R. 294.

(v.) **C. A.**—*Venue.*—To have the venue laid by the plaintiff changed, a defendant must shew the likelihood of serious injury resulting to his case, if the venue be not changed.—*Shroder* v. *Myers*, 34 W.R. 261.

And see Bankruptcy, p. 73, i. Bastardy. Company, p. 75, vi.; 76, iv.; 77, iv. County Court. Criminal Law, p. 78, iv.; 79, iv. Easement, p. 80, iv. Election. Estoppel. Evidence. Husband and Wife, p. 81, vi.; 82, iii. Interpleader. Licence. Limitation of Actions. Local Government, p. 83, vii. Lunatic. Mortgage, p. 85, iv.-vi. Parliament. Ship, p. 96, iii., v.; 97, i.-iii., viii. Solicitor, p. 97, viii. Tramway. Vendor and Purchaser, p. 99, v. Will, p. 103, ii.

Principal and Agent:—

(vi.) **Ch. D.**—*Authority of Solicitor, authorized to Sell, to bind his Client by signing Draft Contract as Approved.*—A vendor's solicitor, authorized to sell, signed what would have been a complete contract, had it not appeared upon the face of it that the signature of the vendor himself was to be obtained: *Held*, that the vendor was not bound.—So also, where the vendor's solicitor, being authorized to sell to a particular person upon condition that the latter relinquished any right of action that he might have against the vendor, approved of a contract with such person not containing such condition.—*Bushell* v. *Pocock*, 53 L.T. 860.

And see Mortgage, p. 86, iii.

Priority:—

(vii.) **Ch. D.**—*Fund in Court—Charging Order.*—A judgment creditor cannot by obtaining a charging order acquire priority over a previous mortgage.—*Re Bell; Carter* v. *Stadden*, 34 W.R. 363.

And see Bankruptcy, p. 72, iv. Company, p. 75, v. Mortgage, p. 86, iii.

Prohibition.—*See* Practice, p. 92, ii.

Public Health Act, 1875 :—

(i.) **C. A.**—*General District Rate—Summons for Payment—Jurisdiction of Justices to Inquire into Validity of Rate.*—On an application for an order for payment of a rate under s. 256 of the Act, if the rate is good on the face of it, and the property in respect of which the occupier is rated lies within the district of the rating authority, the justices' duty is merely ministerial, and they have no jurisdiction to inquire into the validity of the rate.—*R.* v. *Hannam*, 34 W.R. 355.

(ii.) **Q. B. D.**—*Jurisdiction of Justices—Ss.* 150, 257, 261, 268.—In proceedings by a local authority before justices to recover from a frontager his proportion of expenses incurred in the execution of works under s. 150, it is within the jurisdiction of the justices to inquire whether the place in question is a street or a highway repairable by the inhabitants at large.—*Eccles* v. *Guardians of Wirrall Union*, 34 W.R. 412.

(iii.) **Q. B. D.**—*Ss.* 94-96—*Nuisance—Order for Abatement.*—Justices have power, in making an order for the abatement of a nuisance under s. 96 of the Act, to prescribe the precise mode in which the alleged nuisance shall be abated.—*Whitaker* v. *Derby Urban Sanitary Authority*, 55 L.J. M.C. 8.

And see Arbitration.

Railway :—

(iv.) **H. L.**—*Additional Lands—Nuisance.*—Decision of C. A. (*see* Vol. **10**, p. 115, iv.) reversed.—*L. B. & S. C. Ry. Co.* v. *Truman*, L.R. 11 App. Cas. 45; 54 L.T. 250.

(v.) **C. A.**—*Compensation for Injury to Property during Progress of Works—Railways Clauses Consolidation Act*, 1845, *s.* 6—*Lands Clauses Consolidation Act*, 1845, *s.* 68.—Compensation may be recovered, under the above sections, in respect of damage occasioned by land having been injuriously affected during the progress of the authorized works.—*Ford* v. *Metropolitan and Metropolitan District Railway Cos.*, 34 W.R. 426.

(vi.) **Q. B. D.**—*Railway and Canal Traffic Act*, 1854, *s.* 7.—It is *intra vires* and reasonable in a railway company to limit their liability by a notice that they will not be common carriers of dogs, and that they will not receive dogs for conveyance, except upon terms excluding their liability beyond £2, unless a higher value be declared and a percentage of 5 *per cent.* paid upon the excess.—*Dickson* v. *G. N. R. Co.*, 34 W.R. 457.

(vii.) **H. L.**—*Unequal Tolls—Group Rates—Undue Preference.*—Decision of C. A. (*see* Vol. **10**, p. 76, x.) affirmed as to group rates.—An action will not lie for an infringement of s. 2 of the Railway and Canal Traffic Act, 1854.—A desire to foster a new trade does not justify a railway company in charging less upon one class of goods than upon another, passing only over the same portion of their line under the same circumstances.—*Denaby Main Coll. Co.* v. *Manchester &c. Ry. Co.*, 55 L.J. Q.B. 181; 54 L.T. 1.

And see Bill of Sale, p. 74, viii.

Rate :—*See* Poor Rate. Public Health Act, p. 94, i.

Revenue :—

(viii.) **Q. B. D.**—*Carriage Tax*—32 & 33 *Vict.*, *c.* 14, *s.* 18—38 *Vict.*, *c.* 23, *s.* 11.—A coachbuilder who lends a carriage, part of his stock for sale, to a customer whose carriage he is repairing is not liable to pay for a licence in respect of such carriage.—*Davey* v. *Thompson*, 34 W.R. 411.

(i.) **C. A.**—*Probate Duty—Lunatic—Accumulations of Personal Estate—Investment in Realty—Conversion.*—Decision of Q. B. D. (*see* Vol. **10,** p. 116, i.) reversed.—*A.-G.* v. *Marquis of Ailesbury*, L.R. 16 Q.B.D. 408; 34 W.R. 261.

Settlement:—

(ii.) **Ch. D.**—*Marriage Settlement—Covenant to Settle after-acquired Property—Person entitled to enforce Covenant—Heir-at-law.*—Where the obligation to do what ought to be done is not an absolute duty, but only an obligation arising from contract, that which ought to be done is only treated as done in favour of some person entitled to enforce the contract as against the person liable to perform it.—*Re Anstis; Morgan* v. *Chetwynd*, 34 W.R. 383.

(iii.) **Ch. D.**—*Settled Land Act*, 1882, *s.* 2, *sub-s.* 8; *s.* 37; *s.* 56, *sub-s.* 2—*Heirlooms.*—Trustees of a will with power to sell, with the consent of the tenant for life, the real estate settled by the will are, under the S.L.A., 1882, trustees for the sale of chattels settled by the will to be held as heirlooms with the real estate.—*Constable* v. *Constable*, 34 W.R. 470.

(iv.) **Ch. D.**—*Settled Land Act*, 1882, *s.* 2, *sub-ss.* 3, 10; *s.* 36.—Proceedings before the Committee of Privileges of the House of Lords, establishing a claim to a title: *Held*, proceedings for the protection or recovery of settled land, within the meaning of s. 36 of the S. L. A., 1882.—*Re Earl of Aylesford's settled estates*, 34 W.R. 410.

(v.) **C. A.**—*Settled Land Act*, 1882, *s.* 2 (5), (6); *s.* 58 (6), (9).—"Tenant for Life."—Decision of Ch. D. (*see* Vol. **11**, p. 20, iv.) affirmed.—*Re Atkinson; Atkinson* v. *Bruce*, 34 W.R. 445.

(vi.) **C. A.**—*Tenant for Life and Remainderman—Settled Land Act.*, 1882, *ss.* 21 (11), 22 (5), 37, 53—*Proceeds of Sale of Heirlooms—Discharge of Incumbrances.*—Decision of Ch. D. (*see* Vol. **11**, p. 20, vi.) affirmed.—*Re Duke of Marlborough's settlement trusts*, 34 W.R. 377.

And see Bill of Sale, p. 73, vi. Husband and Wife, p. 82, ii., iv., v.

Sewer:—

(vii.) **C. A.**—*Commissioners of Sewers—Protective Banks &c.—23 Hen. VIII., c.* 5—3 & 4 *Will. IV., c.* 22, *ss.* 10, 47.—A bank which answers the description contained in the above section 10 does not *ipso facto* vest in the commissioners; for it to vest in them, they must do something to bring it within their jurisdiction.—*West Norfolk Farmers' Manure Co.* v. *Archdale*, 34 W.R. 401.

Ship:—

(viii.) **N. P.**—*Charter-Party—Bill of Lading—Excepted Perils—Rats.*—Damage to goods on board a ship, caused by sea-water passing through a hole made by rats, the captain and crew having taken all reasonable precautions to keep down the rats on the voyage: *Held*, within the ordinary exception of "dangers and accidents of the seas" in the charter-party and bill of lading.—*Pandorf* v. *Hamilton*, L.R. 16 Q.B.D. 629; 34 W.R. 488.

(ix.) **P. D.**—*Charter-Party—Necessaries—Master's Claim.*—By the terms of a charter-party the owners were to provide and pay for provisions, and the charterer to provide and pay for coals. The captain was to be appointed by the charterer and to follow the charterer's instructions. The captain was in fact appointed by the charterer and was furnished with

a copy of the charter-party. He drew upon the owners for coals and provisions. In an action brought by him against the vessel in respect of his liability on the bill: *Held*, that he could recover in respect of the provisions, but not in respect of the coals.—*The Turgot*, L.R. 11 P.D. 21; 54 L.T. 276.

(i.) **P. D.**—*Collision—Compulsory Pilotage—Interference with Pilot.*—A mere suggestion, not amounting to interference, made by the captain of a vessel to a pilot compulsorily employed will not transfer responsibility to the captain and through him to the owners.—It is the province of the pilot to decide whether or not it is prudent, regard being had to the weather, that the vessel should be under way.—*The Oakfield*, 55 L J. P. 11.

(ii) **P. D.**—*Collision—Crossing Ships—Regulations for Preventing Collisions at Sea, Articles* 16, 23.—The circumstance that a ship is going into dock does not exempt her from observing rule 16 of the Regulations for Preventing Collisions at Sea.—*The St. Audries*, 54 L.T. 278.

(iii.) **P. D.**—*Collision—Practice—Preliminary Act—R. S. C.*, 1883, *O.* xix., *r.* 28 (*i*).—Article 9 of the Preliminary Act on behalf of the defendants was as follows: "*The Lobelia*, when first seen, was at anchor:" *Held*, insufficient information as to the "distance and bearing of the other vessel, when first seen;" and amendment ordered accordingly.—*The Godiva*, L.R. 11 P.D. 20; 55 L.J. P. 13; 54 L.T. 55.

(iv.) **C. A.**—*Collision—Regulations for Preventing Collisions at Sea, Articles* 13, 18.—When the officer in charge of a steamship proceeding at a moderate rate of speed in a fog hears a whistle ahead, it is his duty to slack or stop at once.—*The Ebor*, L.R. 11 P.D. 25; 54 L.T. 200; 34 W.R. 448.

(v.) **P. D.**—*Collision—Sale of Foreign Ship—Practice.*—In an action *in rem* for collision, in which the defendant does not appear, the Court will not order the sale of a foreign ship merely on the marshal's report and the affidavit to lead the warrant: it will require an affidavit verifying the cause of action and stating that no appearance has been entered on behalf of the ship.—*The Hercules*, 54 L.T. 273; 34 W.R. 400.

(vi) **P. D.**—*Collision—Tyne Improvement Commissioners' By-Laws*, 1884; *By-Law* 20.—The meaning of the above by-law is that a vessel coming from the southwards, about to enter the Tyne, is not to cross from the southwards to the northwards close to the pierheads, but some considerable distance outside the piers.—*The Harvest*, L.R. 11 P.D. 14; 54 L.T. 274; 34 W.R. 491.

(vii.) **Q. B. D.**—*Dock*—27 *&* 28 *Vict.*, *c.* clxxviii, *ss.* 100, 101—10 *&* 11 *Vict.*, *c.* 27, *s.* 3.—A dumb barge is not a vessel within 27 & 28 Vict., c. clxxviii., s. 101; consequently the owner of a dumb barge is not liable to a penalty for letting her remain in the London and St. Katherine Docks without any person on board.—*Hedges* v. *London & St. Katherine Docks Co.*, L.R. 16 Q.B.D. 597; 55 L.J. M.C. 46.

(viii.) **Q. B. D.**—*General Average—Liverpool Bonds.*—Where a general average loss has occurred, the contributions to which cannot be immediately ascertained, the shipowner is not entitled to require, as a condition of delivery of goods to a consignee, that the latter shall execute a Liverpool bond. Those bonds are unreasonable, first, in making the shipowner's average-adjuster arbitrator; secondly, in requiring the consignee to make a deposit which shall be practically under the control of the shipowner.—*Huth* v. *Lamport*; *Gibbs* v. *Lamport*, L.R. 16 Q.B.D. 442; 34 W.R. 386.

(i.) **C. A.**—*Limitation of Liability—Right to Claim against Fund in Court.*—At the hearing of an action for collision, brought by the owners of the cargo of the *P.* against the owners of the *A.*, both vessels were found to blame. The owners of the *A.* thereupon limited their liability and paid the amount for which they were liable into Court. A previous action for the same collision brought by the owners of the *P.* against the owners of the *A.*, had been discontinued by consent. *Held*, that the owners of the *P.* were not precluded from proving against the fund in Court.—*The Ardandhu*, 55 L.J. P. 9.

(ii.) **P. D.**—*Practice—Appeal—Refusal of Board of Trade to Rehear—Shipping Casualties Investigation Act*, 1879, *s.* 2.—There is no appeal to the Probate Division against the refusal of the Board of Trade to order a rehearing under the above section.—*The Ida*, 55 L.J. P. 15.

(iii.) **P. D.**—*Practice—Bail—Sale—Marshal's Fees.*—The plaintiff in an action for necessaries having arrested the ship, the mortgagees, who intervened, obtained an order for her sale. It was not suggested that the mortgagees were unable to give bail. *Held*, that the expenses of the sale must be borne by the mortgagees.—*The Colonsay*, L.R. 11 P.D. 17.

(iv.) **C. A.**—*Salvage—Payment by Underwriters—Right of Owner of Cargo to Recover from Shipowner.*—Decision at N. P. (*see* Vol. **10**, p. 119, ii.) affirmed.—*Scaramanga* v. *Martin*, 53 L.T. 810.

Solicitor:—

(v.) **C. A.**—*Bill of Costs—Taxation—6 & 7 Vict., c. 73, s. 37.*—Special circumstances to justify taxation of a solicitor's bill of costs after twelve months from delivery do not necessarily include either pressure or fraud.—*Re Norman; e. p. Bradwell*, 55 L.J. Q.B. 202; 54 L.T. 143; 34 W.R. 313.

(vi.) **Ch. D.**—*Costs of Abortive Sale—Change of Solicitors—Solicitors' Remuneration Act*, 1881; *G. O., r.* 2 (*c*); *Sched. I., Part I., r.* 2.—Where there has been a change of solicitors after an abortive auction, the costs should be taxed under r. 2 (*c*) above. The above r. 2 does not apply where there has been a change of solicitors.—*Re Dean; Ward* v. *Holmes*, 54 L.T. 266.

(vii.) **Ch. D.**—*Power of Sale given to Solicitor by Client—Duty of Solicitor.*—By an agreement of the 31st of May, 1879, A., being indebted to B., his solicitor, charged his interest in a certain railway as security for the debt, giving B. a power of sale, exercisable immediately and without notice, if default in payment should be made on the 11th of July following. The agreement was drawn by B., A. having no independent advice. B. exercised the power of sale. The Court having come to the conclusion that the transaction was not an ordinary mortgage transaction, but that the object of the agreement was simply to give A. time to find money: *Held*, that the sale was not void by reason of B. not having explained to A. that the power of sale was an unusual one.—*Pooley* v. *Whetham*, 34 W.R. 471.

(viii.) **C. A.**—*Practice—Appeal from Order to Strike Solicitor off Roll—Security for Costs.*—A solicitor who appeals from a mixed order, for striking him off the roll and for an account and payment, is subject to the general rule as to security for costs.—*Re Strong*, L.R. 31 Ch. D. 273; 54 L.T. 219; 34 W.R. 420.

And see Company, p. 76, i. Mortgage, p. 86, iii. Partnership, p. 87, i. Principal and Agent. Will, p. 103, ii.

Tort.—*See* Damages, p. 79, viii.

Trade-Mark :—

(i.) **Ch. D.**—*Registration—Assignment—Patents, Designs and Trade-Marks Act*, 1883, *s.* 70.—For an assignee of a trade-mark to have his name placed on the register, it is not necessary that, contemporaneously with the assignment of the trade-mark to him, there should have been an assignment of the goodwill of a business.—*Re Wellcome's trade-marks*, 34 W.R. 455.

(ii.) **Ch. D.**—*Registration—Assignment—Right to Sue—Patents, Designs and Trade-Marks Act*, 1883, *ss.* 77, 78.—Registration of an assignment of a trade-mark is not a condition precedent to the assignee's right to sue for an infringement.—*Ihlee* v. *Henshaw*, L.R. 31 Ch. D. 323; 55 L.J. Ch. 273; 53 L.T. 949; 34 W.R. 269.

(iii.) **C. A.**—*Registration—"Calculated to Deceive"—Patents, Designs and Trade-Marks Act*, 1883, *s.* 72 (2).—Decision of Ch. D. (*see* Vol. **11**, p. 63, iii.) reversed on the facts.—*Re Lyndon's trade-mark*, 34 W.R. 403.

(iv.) **Ch. D.**—*Registration—Pictorial Representation of Article Sold—T. R. A.*, 1875, *s.* 10.—A pictorial representation of an article of commerce is not a "distinctive device" proper to be registered, under the above Act, as a trade-mark for such article.—*Re James' trade-mark; James* v. *Parry*, L.R. 31 Ch. D. 340; 55 L.J. Ch. 214; 54 L.T. 125; 34 W.R. 347.

(v.) **Ch. D.**—*Registration—Title of Well-known Brand.*—In 1876 the plaintiff company registered, for "condensed milk, coffee and milk, cocoa and milk, chocolate and milk, and essence of coffee," a trade-mark consisting of a full length figure of a woman with a pail on her head, held by her left hand, and another pail in her right hand. Before 1882 their condensed milk had become known in the market as Milk-maid or Dairy-maid condensed milk. In 1883, the defendant, with knowledge of the foregoing facts, obtained registration, for "butterine or other fatty substances used as food or ingredients of food," of a stencilled half-length figure of a woman carrying a pail under her right arm, with the words "Dairy-maid" on the sides. *Held*, that the plaintiffs were entitled to have the defendant's registration limited to subjects other than "condensed milk &c."—*Anglo-Swiss Condensed Milk Co.* v. *Metcalf; Re Metcalf's trade-mark*, L.R. 31 Ch. D. 454; 34 W.R. 345.

Tramway :—

(vi.) **Q. B. D.**—*Tramways Act*, 1870, *ss.* 46, 48—*Summary Jurisdiction Act*, 1879.—A by-law made by a local authority, under the T. A., 1870, for regulating the number of passengers to be conveyed by tram-cars does not require the assent of the lessees of the line.—Justices have no right to be heard upon a case stated by them under the S. J. A., 1879.—*Smith* v. *Butler*, L.R. 16 Q.B.D. 349; 34 W.R. 416.

Trust.—*See* Will, p. 101, vi.

Trustee :—

(vii.) **C. A.**—*Husband and Wife—Indemnity.*—A husband is as much liable for his wife's passive as for her active breaches of trust.—Where two trustees have been held jointly liable for a breach of trust, the result of the error of the one and the inaction of the other, the latter trustee is not, in the absence of special circumstances, entitled to be indemnified by the former.—*Bahin* v. *Hughes*, L.R. 31 Ch. D. 390; 54 L.T. 188; 34 W.R. 311.

(viii.) **Ch. D.**—*Investment—Power to Invest in Real Securities—Mortgage of Freehold Brickyard Valued as a going Concern.*—A power to invest in real securities does not authorize trustees to lend money upon a mortgage of freehold premises which is really the security of a trade.—*Whiteley* v. *Learoyd*, 34 W.R. 450.

(i.) **C. A.**—*"Person of Unsound Mind"—Appointment of new Trustees—Trustee Act,* 1850, *ss.* 2, 5, 32, 34.—Decision of Ch. D. (*see* Vol. 11, p. 24, iii.) reversed, and order made under ss. 32 and 34 of the above Act.—*Re Phelps' settlement trusts,* L.R. 31 Ch. D. 351.

And see Lunatic, p. 84, iii. Practice, p. 91, ii.; 92, viii. Vendor and Purchaser, p. 100, ii. Will, p. 101, v.

Trustee Relief Acts:—

(ii.) **Ch. D.**—*Power of Court to Exercise Discretion given to Trustees.*—A. executed a deed-poll declaring that a certain sum was held by him upon trust that he or his executors or administrators should apply it in such manner in every respect as he or they in his or their uncontrolled discretion should think fit for or towards the maintenance or benefit in any way of all, or any one or more, exclusively of the other or others, of the children of a certain person, and, as to all or any part of the sum which should not have been so applied previously to the youngest child, being a son, attaining the age of 21, or, being a daughter, attaining, or marrying under, that age, in trust for all the children in equal shares. His executors paid the money into Court under the above Acts. The Court subsequently ordered certain payments to be made for the maintenance and benefit of some only of the children. *Held,* that, in the division of the fund, such payments were not to be taken into account.—*Re Ashburnham's trusts,* 54 L.T. 84.

Vendor and Purchaser:—

(iii.) **C. A.**—*Conditions of Sale—Compensation—Right to Rescind.*—Action by a purchaser for specific performance with compensation. By an innocent mistake of the vendor, the property, which only consisted of 3a. 1r. 37p., was sold as consisting of 4a. 3r. 37p. One condition provided that no error &c. should annul the sale, and no compensation should be allowed; another condition gave the vendor liberty to rescind, if the purchaser should insist upon any requisition with which he should be unwilling to comply. *Held:* (1), that the purchaser was precluded by the conditions from claiming compensation; (2), that the vendor had a right to rescind the contract.—*Re Terry and White,* 34 W.R. 379.

(iv.) **C. A.**—*Conditions of Sale—General Condition as to Easements &c.—Conveyancing Act,* 1881, *s.* 3, *sub-s.* 3.—Decision at N. P. (*see* Vol. 11, p. 24, vi.) affirmed.—*Nottingham Patent Brick and Tile Co.* v. *Butler,* 34 W.R. 405.

(v.) **Ch. D.**—*Costs of Investigating Title—Summons under V. & P. Act,* 1874.—Upon a summons under the Vendor and Purchaser Act, 1874, for a declaration that the vendor has not shewn a good title, the Court has jurisdiction to order the vendor to pay the purchaser's costs of investigating the title, and to charge such costs upon the vendor's interest in the property.—*Re Yeilding and Westbrook,* L.R. 31 Ch. D. 344; 34 W.R. 397.

(vi.) **Ch. D.**—*Particulars of Sale—Non-Disclosure of Notice of Intention to Quit.*—The particulars of sale of a residential property of 4,400 acres described a farm of 605½ acres, part of the property, as "now in the occupation of H. on a yearly tenancy at the moderate reduced rental of £720 *per annum.*" H. had shortly before written to the vendor, saying that he would "want to give up" the farm before long; and the vendor had written to him in answer: "You will, of course, send me a formal notice at the right time." The purchaser was not aware of this correspondence. *Held,* that the maxim "*caveat emptor*" applied, and he could not resist specific performance.—*Davenport* v. *Charsley,* 34 W.R. 391.

(i.) **Ch. D.**—*Specific Performance—Stipulation for Formal Contract.*—Specific performance of an agreement for sale and purchase, "subject to a formal contract being prepared and signed by both parties, as approved by their solicitors," *refused.*—*Hawkesworth* v. *Chaffey*, 54 L.T. 72.

(ii.) **C. A.**—*Trustee Acts—Vesting Order.*—Where a vendor, after contracting to sell real estate, dies before he has executed the conveyance, the Court will not, treating him as having been a trustee for the purchaser, make an order under the Trustee Acts vesting the property in the latter, unless the right to specific performance has been established by decree, or the contract has been executed by the purchase-money being paid.—*Re Colling*, 34 W.R. 464.

And see Auctioneer. Bankruptcy, p. 72, v. Principal and Agent. Solicitor, p. 97, vi.

Waste.—See Damages, p. 80, i.

Waterworks :—

(iii.) **Q. B. D.**—*Right of Company to Place Stop Valves in Footway—Waterworks Clauses Act, 1847—Metropolis Management Act, 1855.*—The duty of a waterworks company to reinstate a street under the above acts is not an absolute duty, but a duty with reference to that which the company is authorized to do.—*East London Waterworks Co.* v. *St. Matthew's, Bethnal Green, Vestry*, 54 L.T. 180.

And see Poor Rate, p. 88, iv., v.

Will :—

(iv.) **Ch. D.**—*Bequest of Heirlooms—Election—Compensation.*—A. by his will bequeathed certain household effects upon trust for sale for the benefit of B. and C., and gave the residue of his real and personal estate to D. The household effects in question included chattels settled to be enjoyed with a certain mansion-house, of which D. was tenant for life. *Held*, that D. was neither put to his election, nor bound to compensate B. and C.—*Re Lord Chesham ; Cavendish* v. *Dacre*, L.R. 31 Ch. D. 466; 54 L.T. 154; 34 W.R. 321.

(v.) **Ch. D.**—*Construction—Administration—Exoneration.*—A testatrix by her will bequeathed a fund of personalty to the trustees of her will upon trust, "after payment thereout, in the event of my predeceasing my husband, of my debts and funeral expenses, as well as of my testamentary expenses," for her nephew; and, after bequeathing certain pecuniary legacies, devised and bequeathed all her real and personal estate, not thereinbefore otherwise bequeathed, to the trustees upon trust, after her husband's death, for conversion, and, out of the proceeds and the money of which she should be possessed at her death, "subject, nevertheless, to the bequest of moneys to my said nephew hereinbefore contained," to pay her debts, pecuniary legacies and funeral and testamentary expenses, and to invest the residue upon further trusts. She predeceased her husband. *Held*, that the fund specifically bequeathed, was primarily applicable to the payment of her debts and funeral and testamentary expenses.—*Re Lady Hastings ; Hallett* v. *Hastings*, 55 L.J. Ch. 278; 54 L.T. 75; 34 W.R. 452.

(vi.) **C. A.**—*Construction—Devise to Next Heir-at-Law of Devisee in Fee Dying without Leaving Issue.*—A testator, by his will, dated 1878, gave certain real estate to his son and his heirs, and, if the son should die without leaving issue, then to the son's next heir-at-law. The son, having succeeded to the estate, contracted to sell it. The purchaser objected to the title. *Held*, that the gift to the son's heir-at-law was void, inasmuch as, if it were allowed to take effect as an executory devise, it

would only fetter the power of alienation during the lifetime of the son, without altering the devolution of the estate; and that, consequently, the son could make a good title.—*Re Parry and Daggs*, L.R. 31 Ch. D. 130; 55 L.J. Ch. 237; 54 L.T. 229; 34 W.R. 353.

(i.) **Ch. D.**—*Construction—Falsa Demonstratio.*—A devise of "my freehold farm and lands situate at E. and now in the occupation of J. B.," in a will containing no residuary devise, the farm being occupied by the tenant at an entire rent: *Held*, to pass parts of the farm which were copyhold.—*Re Bright-Smith; Bright-Smith* v. *Bright-Smith*, L.R. 31 Ch. D. 314; 54 L.T. 57; 34 W.R. 252.

(ii.) **Ch. D.**—*Construction—Gift Over on Death of Legatee before Becoming Entitled—Vesting.*—A testator devised all his real estate to trustees upon trust to receive the rents and accumulate them until sufficient to pay his debts and provide for the legacies next given. He then bequeathed £200 to J. C., and £150 to S. W., and directed that these legacies should be paid by his trustees at the end of seven years after his decease, and that, in case of the death of J. C., before he should become entitled to his legacy, leaving issue, his legacy should be divided equally between his issue at the end of the seven years, in case such issue should then have attained the age of 21 years, but if they should not then have attained the age of 21 years, then when and as they respectively attained that age. J. C. died within seven years after the testator's death. *Held*, that he became indefeasibly entitled to his legacy on the testator's death.—*Re Crosland; Craig* v. *Midgley*, 54 L.T 238.

(iii.) **Ch. D.**—*Construction—Gift to Children—Afterborn Illegitimate Child.*—In order to ascertain what persons were intended to be benefited by a residuary devise and bequest, the Court may inquire into reputation, but it will not inquire into the fact, of paternity.—*Re Bolton; Brown* v. *Bolton*, 34 W.R. 325.

(iv.) **C. A.**—*Construction—Gift to Children—Illegitimate Children whose Mother is not Past the Age of Child-bearing.*—The possibility of legitimate children being born is not *per se* a sufficient reason for excluding illegitimate children from participation in a bequest to children.—*Re Haseldine; Grange* v. *Sturdy*, 34 W.R. 327.

(v.) **C. A.**—*Construction—Interest Liable to be Divested—Power—Appointment to Trustees—Acquiescence.*—Decision of Ch. D. (*see* Vol. 10, p. 123, viii.) affirmed.—Neither an executor who consents to a fund in which he is interested under a settlement being paid by the trustee of the settlement to a third person, nor the personal representative of such executor, can recover against the trustee on the ground of wilful default.—*Scotney* v. *Lomer*, L.R. 31 Ch. D. 380; 54 L.T. 194; 34 W.R. 407.

(vi.) **Ch. D.**—*Construction—Life Interest or Absolute Interest—Precatory Trust.*—A testator, by his will, gave to his brother T., "in trust for my sisters, M., O. and H., £4,000 of my . . . . railway shares, on condition that they will support V. At the demise of either or any of the above the survivor or survivors to receive the increased income produced thereby. They are hereby enjoined to take care of my nephew, J., as may seem best in the future." *Held*, that M., C. and H. took an absolute interest as joint tenants in the *corpus* of the fund, subject to an obligation to support V., but free from any trust in favour of J.—*Re Moore; Moore* v. *Roche*, 54 L.T. 231; 34 W.R. 343.

(vii.) **Ch. D.**—*Construction—Per Stirpes or per Capita.*—A testator devised certain freehold messuages to trustees upon trust to pay the rents and profits to his son J. and daughter A. equally during their lives, and, after the decease of either of them, without issue living, upon trust to

pay the whole to the survivor for life, but, if there should be issue living of the first of them dying, then, upon trust to pay one moiety to the survivor and divide the remaining moiety between the children of the one so first dying, and, after the decease of the survivor of J. and A., to sell the trust premises and divide the purchase-money equally amongst all and every the child or children of J. and A. who should live to attain twenty-one, in equal shares and proportions, to be paid and payable as and when such children should respectively attain twenty-one. *Held*, that the children of J. and A. took *per stirpes*.—*Re Campbell's trusts*, 34 W.R. 397.

(i.) **Ch. D.**—*Construction—Residuary gift.*—A bequest to A. and B., objects of a testamentary power of appointment, of "all the rest, residue and remainder of my personal estate and effects whatsoever and wheresoever, and of what nature or kind soever, and over which I shall have any power of disposal by this my will": *Held*, to operate as an appointment to A. and B. of a share of the fund, the subject of the power, which had been badly appointed.—*Re Hunt's estate*, L.R. 31 Ch. D. 308; 55 L.J. Ch. 280; 54 L.T. 69; 34 W.R. 247.

(ii.) **Ch. D.**—*Construction—Vesting—"During the Continuance of the Trusts."*—A testator, who died in 1876, by his will gave his freehold house to trustees upon trust to let it as soon as conveniently might be after his death, with power to sell the lease. Until the granting of a lease the trustees were to permit R. and M. to carry on his business in the house. "Subject to the aforesaid trusts and declarations," the testator gave the house and the residue of his estate to the trustees upon trust for sale and conversion as soon as conveniently might be after his death, and to stand possessed of the proceeds in trust for all his children equally. The will contained a proviso as to the shares of his sons, to take effect in favour of strangers, "if any son of mine shall die" without issue "during the continuance of the trusts hereinbefore declared." In 1878 the trustees let the house. In 1881 one of the sons died without issue. The house was unsold. *Held*, that the son's share was unaffected by the proviso.—*Re Teale; Teale* v. *Teale*, 53 L.T. 936; 34 W.R. 248.

(iii.) **Ch. D.**—*Election—Rate of Interest.*—B. executed a declaration of trust, of certain leaseholds belonging to him in right of his wife, for the benefit of all his children equally. The deed being lost, it was uncertain whether or not it contained a power of revocation. By his will he gave legacies of £8,000 to each of his daughters, payable five years after his death, interest in the meantime to be paid on each legacy at the rate of 3 *per cent.* half-yearly; and revoked all settlements and agreements for settlements which he had at any time theretofore executed. *Held*, (1) that the will shewed no intention to revoke the deed of trust; and (2) that the rate of interest to be paid on the daughters' legacies was 6 *per cent. per annum.*—*Re Booker; Booker* v. *Booker*, 54 L.T. 239; 34 W.R. 346.

(iv.) **Ch. D.**—*Power to Appoint by Will—Appointment in Favour of Objects of Power—Invalid Further Appointment by Codicil.*—An invalid appointment by codicil *held* not to operate as a revocation *pro tanto* of a valid appointment by will.—*Duguid* v. *Fraser*, L.R. 31 Ch. D. 449; 55 L.J. Ch. 285; 54 L.T. 70; 34 W.R. 267.

(v.) **Ch. D.**—*Printed Form with Blank Spaces—Appointment of Executor—No Next-of-Kin.*—A will upon a printed form, after certain legacies, gave all the testatrix's real and personal property "unto to and for own use and benefit absolutely," and appointed C. W. C. "to pay all my debts and funeral expenses to be executor of

this my will." The testatrix left no next-of-kin. *Held*, that C. W. C. was entitled, as against the Crown, to adduce parol evidence of an intention on the part of the testatrix that he should take the residue for his own benefit.—*Re Bacon's will; Camp* v. *Coe*, L.R. 31 Ch. D. 460; 54 L.T. 150; 34 W.R. 819.

(i.) **P. D.**—*Revocation—Wills Act*, 1837, *s.* 20.—A testator had obliterated a codicil and appended to it a writing signed and attested by two persons declaring: "We are witnesses to the erasure of the above." *Held*, that the codicil was to be excluded from probate.—*In the goods of Gosling*, 34 W.R. 492.

(ii.) **Ch. D.**—*Solicitor Executor and Attesting Witness—Clause as to Professional Charges—Wills Act*, 1837, *s.* 15—*Executor's Costs.*—A testatrix by her will declared that H., one of her executors, a solicitor, should be entitled to charge for his professional services as if he were not an executor. H. was an attesting witness to the will, and the testatrix's estate was insolvent. *Held*, that H. was not entitled to be paid for professional services.—The defendant in a creditor's administration action has a right to cross-examine the plaintiff for the benefit of the other creditors.—*Re Barber; Burgess* v. *Vinnicombe*, 34 W.R. 395.

(iii.) **C. A.**—*Tenant for Life—Permissive Waste—Claim by Trustees.*—Decision of Ch. D. (*see* Vol. 10, 85, iii.) affirmed.—*Re Williames; Andrew* v. *Williames*, 54 L.T. 105.

(iv.) **N. P.**—*Undue Influence.*—To render influence legally undue there must be coercion.—*Wingrove* v. *Wingrove*, 55 L.J. P. 7; 34 W.R. 260.

And see Apportionment.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times Reports, and Weekly Reporter,

FOR MAY, JUNE, AND JULY, 1886,

By F. T. PIGGOTT, M.A., LL.M., of the Middle Temple,

Barrister-at-Law.

Administration :—

(i) **Ch. D.**—*Evidence Act*, 1879, s. 7.—With a view to the cross-examination of the defendant, an executor and a partner of the testator, the plaintiff is entitled to an order to inspect the banking account of the late firm.—*Marshfield* v. *Hutchings; re Marshfield*, 34 W.R. 511; 55 L.J. Ch. 522; 54 L.T. 564.

(ii.) **Ch. D.**—*Costs—Bankrupt Executor Debtor to Estate.*—A sole executor, defendant to an administration action, became bankrupt after judgment. He owed the estate money advanced to him by testator during his life. *Held*, entitled to his costs subsequent to the bankruptcy: prior costs to be set off against debt.—*O'Donoghue* v. *Vowles; re Vowles*, L.R. 32 Ch. D. 243; 34 W.R. 639.

(iii.) **Ch. D.**—*Costs of Cross-examination of Claimant—Profit—Costs of Executor—Gift to Attesting Witness—Wills Act* (1 *Vict.*, c. 26) *s.* 15.—The executor is entitled to be paid out of the estate the costs of cross-examination of a claimant whose claim appears suspicious, though no ground is discovered for resisting the claim, and though the effect is to throw the costs on the claimant himself. A direction that an executor should be allowed his professional charges for work done is bounty to him, and is avoided by the Wills Act if he attests the will.—*Burgess* v. *Vinnicome; re Barber*, L.R. 31 Ch. D. 665; 55 L.J. Ch. 373; 54 L.T. 375.

(iv.) **Ch. D.**—*Costs—Lapsed Shares of Residue—Next-of-Kin.*—The general residue is the primary fund for payment of costs of ascertaining next-of-kin. An originating summons should be taken out by the trustee under Ord. 55, for an inquiry as to next-of-kin.—*Re Giles*, 34 W.R. 712.

(i.) **Ch. D.**—*Costs—Taxation—Review.*—The taxing-master directed the defendant's costs to be paid to her solicitor. The Court refused to stay the payment pending a summons to review.—*Burgess* v. *Vinnicome; re Barber (No. 2)*, 34 W.R. 578; 54 L.T. 728.

(ii.) **Ch. D.**—*Creditor's Action—Estate of Trader—Joint and Separate Creditors.*—In a separate creditor's action for administration of the estate of a deceased partner in a firm, the estate was sufficient to pay all separate creditors in full, but not the partnership creditors. *Held*, plaintiff entitled to have solicitor and client costs out of the estate.—*Narden* v. *McRae; re McRae*, 54 L.T. 728.

(iii.) **Ch. D.**—*Executor—Retainer.*—An executor proved for a debt due to him by his testator; he handed over assets to a larger amount to the receiver: *Held*, entitled to priority; but with regard to a debt of testator which he paid as guarantor: *Held*, only entitled to stand in the place of the creditor. — *Latimer* v. *Harrison; re Harrison*, L.R. 32 Ch. D. 395.

(iv.) **Ch. D.**—*Inquiry as to Debts—Jurisdiction of Chief Clerk—Purchase of Claims by Solicitor.*—The solicitor to the plaintiff in an administration action purchased two claims after decree, and pending inquiry as to debts. *Held*, the Chief Clerk had no jurisdiction to state that he held the surplus beyond what he had paid for them as trustee for the creditor. —*Field* v. *Lydall; re Tillett*, 54 L.T. 604.

(v.) **P. D.**—*Intestacy—Duchy of Lancaster.*—Where an intestate died leaving no known relatives, and his estate had been partly administered by his widow, who died leaving a will, the Court made a grant *de bonis non* to the nominee of the Duchy of Lancaster, who was the widow's residuary legatee.—*In the Goods of Avard*, L.R. 11 P.D. 75.

(vi.) **Ch. D.**—*Payment under Mistake of Law to Trustee in Liquidation.*—In an administration money had been paid to a trustee in the liquidation of one of the parties under a mistake of law. *Held*, bound to repay it. Ch. D. will not act on bankruptcy rule as laid down in *e. p. James; re Condon* (L.R. 9 Ch. 609; 30 L.T. 773), and *e. p. Simmonds; re Carnac* (L.R. 16 Q.B.D. 308; 54 L.T. 439).—*Dixon* v. *Brown; re Brown*, 54 L.T. 789.

(vii.) **C. A.**—*Revocation of Letters—Married Woman.*—Decision of P. D. (*see* Vol. **11**, p. 71, ii.) affirmed.—*In the Goods of Reid*, L.R. 11 P.D. 70; 34 W.R. 577; 54 L.T. 590.

(viii.) **C. A.**—*Service of Notice of Judgment—Purchaser not a Party—Appearance.*—In an administration action, notice of judgment was served on a purchaser of part of the testator's estates in which the plaintiff was not interested: he was not a party. In order to ascertain his position he appeared under Ord. 16, r. 41. *Held*, as the judgment did not affect him the service was irregular, that he was right in appearing, and that his appearance must be vacated.—*Betts* v. *Betts; re Simons*, 54 L.T. 501.

See Solicitor, p. **132**, vii.

Arbitration :—

(ix.) **C. A.** — *Construction of Contract—Refusal of Engineer to Certify—"All Disputes"*—Contract for sale of engines, price to be paid on certificate of engineer, "all disputes" to be settled by arbitration. The engineer refused to certify: vendors proceeded to arbitration, purchasers taking

part under protest. *Held*, as the arbitrator had not exceeded his jurisdiction, the Court would enforce the award given in favour of vendors. —*Re Arbitration between Hohenzollern Co. and City of London Co.*, 54 L.T. 596.

See Building Society, p. 110, iv.

Banker :—

(i.) **C. A.**—*Lien—Overdrawn Account—Deposit of Security by Partner.*—A firm and the senior partner had separate accounts at the same bank, both being overdrawn. The partner had deposited securities for both. He afterwards deposited his lease on security for a further advance to the firm. The security was realised. In the bankruptcy of the partner, the trustee *held* entitled to recover the balance of proceeds of the lease after allowing for the further advance and for the partner's overdraft.—*Wolstenholm* v. *Sheffield Union Bank*, 54 L.T. 746.
See Administration. Colonial Law.

Bankruptcy :—

(ii.) **C. A.**—*Appeal—Registrar of County Court.*—Where an order on appeal from a County Court in bankruptcy is made by the High Court, and the Registrar fails to carry it out, the High Court has no original jurisdiction to direct him to do it.—*Re Wise ; e. p. Croydon County Court Registrar*, 55 L.J. Q.B. 362; 54 L.T. 722; 34 W.R. 711.

(iii.) **C. A.**—*Bankruptcy Notice—Final Judgment—Assignee of Judgment Creditor—Bankruptcy Act*, 1883, *s.* 4, *sub-s.* 1.—The persons entitled to issue a bankruptcy notice are the judgment creditor himself and his representatives by operation of law—not an assignee.—*E. p. Blanchett ; re Keeling*, L.R. 17 Q.B.D. 303; 55 L.J. Q.B. 327; 34 W.R. 538.

(iv.) **Q. B. D.**—*Books of Account—Rule* 259 (1883).—Correspondence, old cheque books, counterfoils of cheques, and accounts relating to claims by the debtor are not "books of account" within rule 259.—*E. p. Godfrey ; re Winslow*, L.R. 16 Q.B.D. 696; 34 W.R. 534; 55 L.J. Q.B. 238; 54 L.T. 306.

(v.) **C. A.** — *Composition Deed — Inconsistency —Settlement—Forfeiture—Special Case from County Court—Appeal.*—General words in an assignment *held* to be controlled by a recital shewing that deed was intended to apply only to the property scheduled. A life interest subject to forfeiture in the event of bankruptcy *held* not to be forfeited by filing a petition or by executing a composition deed. An appeal lies to C. A. from decision on special case stated by a County Court Judge.—*E. p. Dawes ; re Moon*, L.R. 17 Q.B.D. 275.

(vi.) **Q. B. D.**—*County Court Order—Payment by Instalments.*—When a Superior Court gives judgment for, and orders payment, of a lump sum, without considering the debtor's means, the County Court, when proceedings are taken on the judgment, may consider the question and vary the order.—*E. p. Close ; re Dewhurst*, 34 W.R. 594.

(vii.) **Q. B. D.**—*Custom—Agistment.*—The custom of agistment is notorious, and no reputation of ownership can arise in the case of stock upon the lands of a foreigner.—*E. p. Huggins ; re Woodward*, 54 L.T. 683.

(viii.) **Q. B. D.**—*Custom of Trade.*—Patterns belonging to wholesale manufacturer : *Held*, in accordance with custom of trade not to be in reputed ownership of bankrupt.—*E. p. Woodward ; re Lay*, 54 L.T. 683.

(i.) **Q. B. D.**—*Death of Debtor.*—A debtor died two days after filing his petition. *Held*, proceedings should continue.—*Re Walker*, 54 L.T. 682; 34 W.R. 550.

(ii.) **Q. B. D.**—*Execution Creditor—Garnishee—Receipt of Debt.*—A third person intervened claiming a debt garnished by a judgment creditor: money was paid into Court by order. Receiving order having been made against judgment debtor, and claim being withdrawn: *Held*, there had been no receipt of the debt as against trustee in bankruptcy.—*Butler* v. *Wearing*, L.R. 17 Q.B.D. 182.

(iii.) **C. A.**—*Fraudulent Conveyance—13 Eliz., c. 5.*—Pending an action for breach of promise of marriage, and being able to pay all debts with property other than that settled, a married man executed a voluntary settlement for the benefit of wife and children. Judgment being obtained against him, he was adjudicated bankrupt, and he having denied any attempt to delay or defraud creditors: *Held*, insufficient evidence to warrant finding that there had been a fraudulent conveyance.—*E. p. Mercer; re Wise*, L.R. 17 Q.B.D. 290; 54 L.T. 720.

(iv.) **Q. B. D.**—*Married Woman—Separate Property—General Power of Appointment.*—Realty vested by marriage settlement in trust for wife for separate use without restraint on anticipation, with general power of appointment: *Held*, she was subject to bankruptcy laws under M. W. P. Act, 1882, s. 1, sub-s. 5, and was directed to exercise the power in favour of the trustee in bankruptcy under Act of 1883, s. 24.—*E. p. Gilchrist; re Armstrong*, L.R. 17 Q.B.D. 167; 34 W.R. 709.

(v.) **H. L.**—*Partnership—Stockbroker—Incomplete Transfer—Reputed Ownership.*—Decision of C.A. (*see* Vol. **11**, p. 3, ii.) reversed.—*Colonial Bank* v. *Whinney*, 34 W.R. 705.

(vi.) **Q. B. D.**—*Preferential Debts—Wages—Bankruptcy Act*, 1883, *s.* 40, *sub-s.* (1)—*Rule* 249 (1883).—"Four months before the date of the receiving order" means four months next before the date of an order which prevents the debtor from receiving the profits of his business, as the order appointing an interim receiver. If the trustee objects to the accounts furnished by the Official Receiver he ought to act under rule 249.—*E. p. Fox; in re Smith.*—L.R. 17 Q.B.D. 4; 34 W.R. 535; 55 L.J. Q.B. 288; 54 L.T. 307.

(vii.) **Q. B. D.**—*Proof—Money Advanced by Wife—Covenant to Settle—Equity to a Settlement—Waiver.*—A wife lent money to her husband for his business on terms that he would execute a settlement of it, which was done. *Held*, proof in the bankruptcy of the husband could not be admitted upon the settlement, and that it was not within 13 Eliz., c. 5, nor M. W. P. Act, 1882, s. 3, nor Bankruptcy Act, 1869, s. 91.—*E. p. Home; re Home*, 54 L.T. 301.

(viii.) **C. A.**—*Scheme of Arrangement—Approval of Court—Official Receiver's Report—Bankruptcy Act*, 1883, *ss.* 18, 28—*Costs of Appearance of Official Receiver.*—The object of requiring the approval of the Court to a scheme of arrangement is to protect a minority of creditors against a majority. The Court must have regard to the report of the official receiver as to the terms of the scheme and the conduct of the debtor. In the absence of special circumstances the costs of the appearance of the Official Receiver will not be allowed.—*E. p. Reed and Bowen; In re Reed and Bowen.*—L.R. 17 Q.B.D. 284; 34 W.R. 493; 55 L.J. Q.B. 244.

(ix.) **C. A.**—*Trustee—Bankruptcy Act*, 1883, *s.* 18, *sub-ss.* 12, 13, *ss.* 27, 168.—Trustee in section 27 of the Bankruptcy Act means a trustee in bankruptcy and not a trustee appointed under a scheme of arrangement. —*E. p. Whinney; In re Grant*, L.R. 17 Q.B.D. 238; 34 W.R. 539; 54 L.T. 632.

(i.) **Q. B. D.**—*Valuation of Security.*—A creditor cannot amend his valuation of his security after the trustee has given notice that he will redeem, although the Act says he can do so "at any time."—*E. p. Norris; re Sadler*, 34 W.R. 704.

See Administration, pp. 105, ii.; 106, vi. Patent, p. 124, viii. Solicitor, p. 132, iii. Trustee, p. 134, ii.

Bastardy :—

(ii.) **Q. B. D.**—*Appeal—Form of Notice.*—An appeal to sessions against a bastardy order can only be brought under Summary Jurisdiction Act, 1879, s. 31, sub-s. 2; and must therefore state the grounds of appeal.—*R.* v. *Shingler*, L.R. 17 Q.B.D. 49; *Shingler* v. *Smith*, 54 L.T. 759.

Bill of Sale :—

(iii.) **Q. B. D.**—*After Acquired Property.*—A bill contained an assignment of all book debts which might, during the continuance of the security, become due. *Held*, a valid assignment.—*Official Receiver* v. *Tailby*, L.R. 17 Q.B.D. 88.

(iv.) **C. A.**—*Covenant for Payment.*—A covenant for payment of money advanced and interest contained in a bill void as not being in the scheduled form, is not an independent covenant but is void.—*Davies* v. *Rees*, 34 W.R. 573; 55 L.J. Q.B. 363.

(v.) **Q. B. D.**—*Power of Sale.*—A bill providing that the power of sale conferred by the Conveyancing Act, 1881, shall be exercised, as if section 20 of that Act had not been enacted: *Held*, valid.—*E. p. Bentley; re Morritt*, 34 W.R. 579.

(vi.) **Q. B. D.**—*Promissory Note of Even Date.*—A bill, otherwise valid, accompanied by another document containing terms not allowed by the Act, the whole conditions being gathered from the joint effect of the two documents, is void.—*Simpson* v. *Charing Cross Bank*, 34 W.R. 568.

(vii.) **Q. B. D.**—*Seizure in Streets—Removal to Private Premises—Bills of Sale Act*, 1882, *s.* 13.—Goods seized in the street under a bill of sale may be removed to private premises and kept there the requisite time until sale.—*O'Neill* v. *City Finance Co.*, L.R. 17 Q.B.D. 234; 34 W.R. 545.

(viii.) **Q. B. D.**—*Statement of Consideration—Form in Schedule.*—Bill of sale expressed to be given in consideration of the grantee having become guarantee at grantor's request and having signed a promissory note on which a certain sum was due, and assigning certain chattels by way of security for any sum the grantee might be called on to pay. *Held*, good within section 8 of Bills of Sale Acts.—*Hughes* v. *Little*, L.R. 17 Q.B.D. 204; 34 W.R. 703.

(ix.) **Q. B. D.**—*Validity.*—A bill is not void for omitting to specify the house or place at which the goods assigned are situated.—*E. p. Hill; re Lane*, L.R. 17 Q.B.D. 74.

(x.) **Q. B. D.**—*Validity—Additional Term for Assignee's Benefit.*—A proviso after a power of sale that "upon any such sale the purchaser shall not be bound to see or inquire whether any such default has been made as aforesaid," renders the bill void.—*Parsons* v. *Hargreaves*, 34 W.R. 717.

(xi.) **C. A.**—*Validity—Implied Covenants—Conveyancing Act*, 1881, *s.* 7, *par.* (*C*)—*Bills of Sale Act*, 1882, *ss.* 7, 9, 13.—A description of the grantor in a bill of sale incorporated the covenants contained in section 7

par. C, of the Conveyancing Act, 1881. The covenant for quiet enjoyment contained in the Conveyancing Act, 1881, s. 7, par C, is inconsistent with section 13 of the Bills of Sale Act, 1882, and the bill of sale therefore void.—*E. p. Stanford; In re Barber*, L.R. 17 Q.B.D. 259; 55 L.J. Q.B. 339, 341; 34 W.R. 507.

(i.) **Q. B. D.**—*Validity—Recited Indenture.*—A bill, after reciting a certain indenture, contained an agreement by the grantor that he would perform the covenants contained in it; the covenants were not set out. *Held*, the bill was void.—*Lee* v. *Barnes*, L.R. 17 Q.B.D. 77; 34 W.R. 640.

Building:—

(ii.) **Q. B. D.**—*Local Board—Erection Without Approval—Validity of By-Law.*—A by-law imposing a penalty "for every day the work shall continue" is bad, and not authorised by Local Government Act, 1848, s. 115, and Public Health Act, 1875, s. 326. The offence is "commencing to build without approval;" and the continuing offence, "continuing to build without approval;" and proceedings must be commenced within six months in either case under Jervis' Act, s. 11.—*Reay* v. *Mayor of Gateshead*, 34 W.R. 682.

(iii.) **Q. B. D.**—*Public Health Act*, 1875, *s.* 156.—Section 156 of the Public Health Act, 1875, does not apply to buildings erected on land not previously built upon.—*Williams* v. *Wallasey Local Board*, L.R. 16 Q.B.D. 718; 34 W.R. 517; 55 L.J. M.C. 133.

See Settlement, p. 129, vi.

Building Society:—

(iv.) **C. A.**—*Rules—Arbitration—Mortgage.*—By Building Societies Act, 1884, s. 2, a society may obtain a remedy in the ordinary course of law in respect of a mortgage between the society and one of the members and is not in all cases compelled to go to arbitration under its rules.—*Western Suburban Building Society* v. *Martin*, 34 W.R. 630 (reversing Q. B. D.—L.R. 17 Q.B.D. 66).

By-laws.—*See* Buildings, p. 110, ii. Municipal Law, p. 124, iv. Tramway, p. 134, i.

Charity.—*See* Friendly Society, p. 117, vi.

Colonial Law:—

(v.) **P. C.—China Settlements.**—*Land and Municipal Regulations*, 1854, *Art.* 5.—The rights of renters of beach grounds of rivers as against the rights of the public under the Act defined.—*Ince* v. *Thorburn*, L.R. 11 App. Ca. 180.

(vi.) **P. C.—Jersey.**—*Right of Way.*—A public right of way cannot be created by a mere dedication by the owner of the fee simple at any time, followed by user.—*De Carteret* v. *Baudains.*—*De Carteret* v. *Gautier*, L.R. 11 App. Ca. 214.

(vii.) **P. C.—Lower Canada.**—*Rights of Crown to priority of payment—Conflict between the Codes.*—The Crown is bound by the two Codes of Lower Canada, and has no priority except what is allowed by them.—Art. 611, Code of Civil Procedure must be modified to be in harmony with Art. 1994, Civil Code.—*Exchange Bank of Canada* v. *R.*, L.R. 11 P.C. 157.

(i.) **P. C.—New South Wales.**—*Bank Incorporating Acts—Foreclosure.*—A mortgage having been properly taken by a bank in terms involving foreclosure: *Held*, there was nothing in the Incorporating Acts which took away the power of foreclosure.—*Bank of New South Wales* v. *Campbell.*—L.R. 11 App. Ca. 192; 54 L.T. 340.

(ii.) **P. C.—New South Wales.**—*Legislative Assembly—Power of Suspension—Trespass.*—A member of the N.S.W. Assembly having entered the Chamber within a week after he had been suspended from the service of the House, was removed. *Held*, in trespass, that the resolution did not operate beyond the sitting during which it was passed.—The standing order assimilating the forms to that of the British Parliament is valid, but relates only to such as were in force at the date. And the powers inherent in a Colonial Legislative Assembly do not justify punitive action or suspension during pleasure.—*Barton* v. *Taylor*, L.R. 11 App. Ca. 197.

(iii.) **P. C.—South Australia.**—*Registration Act—Priorities.*—Under the Act, 5 Vict., No. 8, s. 3, a prior unregistered document of a registrable nature cannot convey a good title against a subsequent registered document. The Act does not exclude a claim upon an unwritten equity of which the subsequent purchaser has notice.—*White* v. *Neaylon*, L.R. 11 App. Ca. 171; 54 L.T. 689.

(iv.) **P. C.—Victoria.**—*Lands Compensation Act*, 1869, *s.* 35—*Set off.*—"Enhancement in value" includes that which arises from the use as well as the construction of the railway. But it may only be set off against the amount awarded for damage from compulsory taking or severance, and not against the compensation value of the land.—*Harding* v. *Board of Lands and Works*, L.R. 11 App. Ca. 208.

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(v.) **C.A.**—*Company's lien on Shares—Mortgage of Shares—Priority—Consideration—Contract not to be Performed within a Year.*—Decision of Ch. D. (*see* Vol. **11**, p. 5, v.) affirmed.—*Miles* v. *New Zealand Alford Estate Co.*, L.R. 32 Ch. D. 266; 34 W.R. 669; 54 L.T. 582.

(vi.) **C. A.**—*Debenture Stock—Overissue—Measure of Damages.*—Advances were made by the bank to a company, the arrangement being that the bank took bills drawn by the contractor on the company, and certificates of debenture stock as collateral security. There was an overissue of debentures, and the company was insolvent. A special Act dealt with different claims, stock, which was worthless being awarded to the bank. Some of the certificates had been endorsed by a director as being within the statutory limit. *Held*, the bank could recover against the director on the warranty, the measure of damages being the difference between actual value and that of properly issued certificates.—*Whitehaven Bank* v. *Reed*, 54 L.T. 360.

(vii.) **C. A.**—*Memorandum of Association—Signature by Agent—Companies Act*, 1862, *s.* 6.—A person's name may be signed to the memorandum of association by an authorised agent. The agent need not be authorised by deed.—*In re Whitley; e. p. Callan*, L.R. 32 Ch. D. 337; 34 W.R. 505; 55 L.J. Ch. 540.

(viii.) **C. A.**—*Promoter's Agreement.*—Decision of Ch. D. (*see* Vol. **11**, p. 76, iii.) affirmed.—*Re Northumberland Avenue Hotel Co.; Sully's case*, 54 L.T. 777.

(i.) **Ch. D.**—*Solicitor—Officer of Company—Companies Act*, 1862, *s.* 165.—The solicitor of a company is not an officer within section 165 of the Companies Act, 1862.—*In re Great Western Forest of Dean Coal Consumers' Company; Carter's Case*, 34 W.R. 516; 55 L.J. Ch. 494; 54 L.T. 531.

(ii.) **Ch. D.**—*Voluntary Winding-up—Future Liability under a Lease—Companies Act*, 1862, *s.* 133, *sub-s.* 1.—A company in voluntary liquidation restrained by injunction from distributing its assets among the shareholders without providing for future liabilities under a lease. Appeal compromised.—*Gooch* v. *London Banking Association*, L.R. 32 Ch. D. 41.

(iii.) **Ch. D.**—*Voluntary Winding-up—Lunatic—Liquidator—Jurisdiction—Companies Act*, 1862, *ss.* 81, 140, 141.—The Court has jurisdiction to appoint a new liquidator in the place of a lunatic in a voluntary winding-up.—*In re North Molton Mining Co.*, 34 W.R. 527; 54 L.T. 602.

(iv.) **C. A.**—*Winding-up—Contributories—Executors Taking Shares.*—Decision of Ch. D. (*see* Vol. **11**, p. 37, i.) affirmed.—*Re Cheshire Banking Co.; Duff's Executors' Case*, L.R. 32 Ch. D. 301; 54 L.T. 558.

(v.) **Ch. D.**—*Winding-up—Contributory—Original Director.*—If there is a time allowed for directors to qualify, and one of them has not done so, if he retires within that time he cannot be put on the list of contributories.—*Re Self-Acting Sewing Machine Co.*, 54 L.T. 676.

(vi.) **Ch. D.**—*Winding-up—Discharge of Servants of Company—Waiver.*—A winding-up order is notice of discharge to all the servants of the company. It can be waived by the liquidator and a new employment entered into but only in a clear and unequivocal manner.—*In re Oriental Bank Corporation; McDowall's Claim*, L.R. 32 Ch. D. 366; 34 W.R. 529; 54 L.T. 667.

(vii.) **Ch. D.**—*Winding-up—Mistake in Title of Company—Amendment.*—There is jurisdiction to order a winding-up petition to be amended and re-advertised where the title of the company has been misstated in the petition and advertisements.—*In re Army and Navy Hotel*, L.R. 31. Ch. D. 644; 55 L.J. Ch. 370, 511.

(viii.) **Ch. D.**—*Winding-up Petition—Locus Standi—Executor.*—The executor of a creditor is entitled to present a petition before obtaining probate. He should obtain probate before the hearing.—*Re Masonic Life Assurance Co.*, L.R. 32 Ch. D. 373.

See Principal and Agent, p. 128, i.

Compensation :—

(ix.) **C. A.**—*Compulsory Purchase of Land—Costs of Payment out—Lands Clauses Consolidation Act*, 1845, *s.* 1—3 *&* 4 *Vict., c.* 87, *s.* 49—18 *&* 19 *Vict., c.* 95, *ss.* 9, 11.—The Lands Clauses Consolidation Act is incorporated into every subsequent Act which authorises the taking of land; and if such Act affects the Crown, makes the Crown liable for costs, although it is not mentioned in the Lands Clauses Consolidation Act.—*In re Wood's Estate; e. p. Her Majesty's Commissioners of Works and Buildings*, L.R. 31 Ch. D. 607; 55 L.J. Ch. 488.

(x.) **C. A.**—*Land for Sewage Farm—Adjoining Property.*—Decision of Q. B. D. (*see* Vol. **10**, p. 36, i.) reversed.—*R.* v. *Essex*, 34 W.R. 587; 55 L.J. Q.B. 313; 54 L.T. 779.

(i.) **C. A.**—*Power to take Land—Altering Level of Streets—City of London Sewers Act*, 1848, *s.* 120—*Adjudication of Commissioners—Acquiescence.*—The commissioners of sewers have not power to take land by compulsion for the purpose of altering the level only of a street.—The adjudication of the commissioners that land is required for an improvement is not conclusive.—A negotiation as to the price by an owner of property in ignorance of the plans of the commissioners is not an acquiescence in the taking of the property so as to preclude him from objecting to their right to take.—*Lynch* v. *Commissioners of Sewers of the City of London*, L.R. 32 Ch. D. 72; 55 L.J. Ch. 409; 54 L.T. 699.

See Colonial Law, p. 111, iv. Railway, p. 128, vii.

Contract:—

(ii.) **Q. B. D.**—*Measure of Damages—Sum paid by Plaintiff by Mistake.*—The damages recoverable for a breach of contract are those naturally flowing from the breach, and do not include a sum which the plaintiff has, under a mistake as to his own liability, paid to a person who claimed damages against the plaintiff for an accident resulting from the breach. *Kiddle* v. *Lovett*, 35 W.R. 518.

See Arbitration, p. 106, ix. Company, p. 111, v. Vendor and Purchaser, p. 135, i.

Copyhold.—*See* Settlement, p. 129, ix.

Copyright:—

(iii.) **Ch. D.**—*Photographic Album.*—An album with a list of castles, coloured drawings and descriptions, covering part of a page is not a "book," within 5 & 6 Vict., c. 45.—*Schove* v. *Schmincke*, 34 W.R. 700.

Counsel.—*See* Solicitor, p. 132, v.

County Court:—

(iv.) **Q. B. D.**—*Demand for Jury—Time.*—Under Ord. 39 b., r. 4 (Rules 1875), notice for demand for a jury must be given 15 clear days before the day orginally fixed for the return of the summons, and not before a day to which the hearing has been adjourned.—*R.* v. *Leeds County Court Registrar*, L.R. 16 Q.B.D. 691; 55 L.J. Q.B. 365.

(v.) **Q. B. D.**—*Detinue—Order for Delivery of Chattel—Judicature Act*, 1873, *s.* 89—*County Court Rules*, 1875—*Ord.* 43, *r.* 37—*Ord.* 48, *r.* 1.—A County Court has power to order specific delivery of a chattel without giving the defendant the option of paying the value.—The value of the chattel can be sufficiently assessed by agreement of the parties to enable the Court to order its delivery.—*Winfield* v. *Boothroyd*, 34 W.R. 501; 54 L.T. 574.

(vi.) **Q. B. D.**—*Jurisdiction—Title to Lands—Apportionment of Rent.*—The plaintiff was lessee of premises at an annual rent of £56, including a party wall as to the title of which there was a dispute. *Held*, the County Court, under Act of 1867, s. 12, had jurisdiction to try an action for a trespass on the wall, that part of the premises being less than £20 annual value.—*Stolworthy* v. *Powell*, 55 L.J. Q.B. 228; 54 L.T. 795.

See Bankruptcy, p. 107, ii., v., vi. Election, p. 116, viii. Friendly Society, p. 117, vii.

Criminal Law:—

(vii.) **Q. B. D.**—*Conspiracy—Vexatious Indictments Act*, 1859—*Refusal to Bind over to Prosecute.*—When a prosecutor *bonâ fide* prefers a charge under the Vexatious Indictments Act, 1869, and the justice dismisses it for want of prosecution, this is equivalent to a refusal to commit, and the prosecutor may demand to be bound over to prosecute by way of indictment.—*R.* v. *Lord Mayor of London; e. p. Gostling*, 54 L.T. 646.

(i.) **C. C. R.**—*Corrupt Practices—Form of Indictment—46 & 47 Vict., c. 51, s. 3.*—Prisoner indicted for "corrupt practices" at an election for Member of Parliament at &c. It was proved that he promised money to voters to induce them to vote. The jury found him guilty of corrupt practices by offering money for votes. *Held*, the indictment bad for uncertainty, but cured by the verdict.—*R.* v. *Stroulger*, 34 W.R. 719.

(ii.) **C. C. R.**—*Embezzlement—Fraud by an Agent—Stock Jobbing—Deposit for Cover and Commission.*—A stock-broker received an order to buy stock, together with a cheque for "cover and commission": he did not buy, but paid the cheque into his bank and spent the money: *Held*, rightly convicted under 24 & 25 Vict., c. 96, s. 75.—*R.* v. *Cronmire*, 54 L.T. 580.

(iii.) **C. C. R.**—*False Pretences—Reasonable Inference for Jury.*—Food was supplied to a lodger, believing a statement he had made as to clothes left at another lodging. *Held*, the direction that jury were to be satisfied that the pretence was false, that the prosecutrix acted on it, and that it was made with intent to defraud, was substantially accurate.—*R.* v. *Burton*, 54 L.T. 765.

(iv.) **C. C. R.**—*Malicious Wounding—24 & 25 Vict., c. 100, s. 20.*—Blow aimed at one person hit another by accident: *Held*, conviction right. "Malicious" in the statute being satisfied by malice which had a different object than the person hit.—*R.* v. *Latimer*, 55 L.J. M.C. 135; 54 L.T. 768.

(v.) **C. C. R.**—*Perpetuation of Testimony—30 & 31 Vict., c. 38, s. 6.*—Where it is intended to take the deposition of a dying person in a criminal matter, notice in writing must be served on the person against whom it is tendered.—*R.* v. *Shurmur*, 34 W.R. 656.

(vi.) **Q. B. D.**—*Prosecution of Brothel-Keeper—Alternative Procedure.*—In prosecuting a brothel-keeper under Criminal Law Amendment Act, 1885, s. 13, the prosecutor may either proceed summarily under that Act, or under 25 Geo. II., c. 36, s. 5, and 58 Geo. III., c. 73, s. 7, and become entitled to a reward.—*Kirwin* v. *Hines*, 54 L.T. 610.

See Bastardy, p. 109, ii. Ecclesiastical Law, p. 115, viii. Highway, p. 118, iii. Husband and Wife, p. 119, iii. License, p. 121, v., vi.

Crown.—*See* Colonial Law, p. 110, vii. Ship, p. 131, iv.

Custom.—*See* Bankruptcy, p. 107, vii., viii.

Death.—*See* Bankruptcy, p. 108, i.

Divorce :—

(vii.) **P. D.**—*Contempt of Court.*—A co-respondent advertised denying the charges made in the petition, and offering a reward for information leading to the discovery of the authors of them: *Held*, a contempt of Court.—*Brodribb* v. *Brodribb*, L.R. 11 P.D. 66; 34 W.R. 580.

(viii.) **C. A.**—*Decree Nisi—Dismissal of Co-respondent—Queen's Proctor's Intervention—Restoration of Co-respondent.*—Where a co-respondent has been dismissed from a suit, and the Queen's Proctor intervenes, the issue is solely between him and the petitioner, and neither respondent nor co-respondent have any *locus standi.*—*Crawford* v. *Crawford*, 34 W.R. 677.

(i.) **C. A.**—*Double Proceedings.*—A wife against whom a petition for divorce is pending in India is entitled to maintain a suit for restitution for conjugal rights, both parties being temporarily in England.—*Thornton* v. *Thornton*, 34 W.R. 509; 54 L.T. 774.

(ii.) **C. A.**—*Maintenance.*—A respondent after decree absolute had been ordered to execute a deed for securing the petitioner's maintenance, but had not executed it. The Court directed the registrar to execute it under Judicature Act, 1854, s. 14, due notice on the respondent's solicitor being given.—*Howarth* v. *Howarth*, 34 W.R. 633 (in P. D. L.R. 11 P.D. 68).

Easement:—

(iii.) **C. A.**—*Ancient Lights—Alteration of Dominant Tenement.*—Decision of Ch. D. (*see* Vol. **11**, p. 39, iii.) affirmed.—*Scott* v. *Pape*, L.R. 31 Ch. D. 554; 55 L.J. Ch. 426; 54 L.T. 399.

(iv.) **Ch. D.**—*Grant—Extinguishment—Merger.*—Owners granted lease of a strip of land for a canal, with proviso that they might use the land as a road so as not to injure the canal. Afterwards the co-owners A., B., and C. by partition deed conveyed the reversion of the canal to B., and the abutting lands to A. and C. severally. B. conveyed the reversion to the lessees. *Held*, the easement was extinguished.—*Dynevor* v. *Tennant*, L.R. 32 Ch. D. 375; 54 L.T. 640.

(v.) **C. A.**—*Light and Air—Right of Way—2 & 3 Will. IV., c.* 71, *ss.* 2, 3, 8—"*Building.*"—Decision of Ch. D. (*see* Vol. **11**, p. 80, iv.) reversed.—*Harris* v. *De Pinna*, 54 L.T. 770.

(vi.) **H. L.**—*Right of Support—Successive Subsidences by Excavations—Statute of Limitation.*—Decision of C. A. (*see* Vol. **10**, p. 9, vii.) affirmed.—*Darley Main Colliery Co.* v. *Mitchell*, L.R. 11 App. Ca. 127.

(vii.) **Ch. D.**—*Right of Way—Conveyance of—General or Limited.*—A conveyance of a right of way as appurtenant to land which is conveyed for the purpose of constructing works authorises the use of the way for all purposes connected with the works, though it had before been used for limited purposes only.—*Serff* v. *Acton Local Board*, L.R. 31 Ch. D. 679; 34 W.R. 563; 54 L.T. 379.

See Colonial Law, p. 110, vi.

Ecclesiastical Law:—

(viii.) **Ch. Ct. York.**—*Letters of Request—Criminal Offence.*—Letters requesting a clerk to be cited to answer a charge of sodomy, refused, until the clerk had been tried and convicted by a Criminal Court.—*In the matter of A. B. Clerk*, L.R. 11 P.D. 56.

(ix.) **Q. B. D.**—*Resignation of Incumbent—Pension.*—"Annual value" in Incumbents Resignation Act, 1871, s. 8, relates to the time of assessment of the pension: the pension fixed by the bishop can, therefore, be recorded in spite of the diminution of the revenues of the parish.—*Robinson* v. *Dand*, 34 W.R. 639.

Elections:—

(x.) **Q. B. D.**—*Municipal Qualification for Election—Municipal Corporations Act*, 1882.—A person is not qualified for election as a Town Councillor by the fact that he is on the burgess roll and therefore entitled to vote.—*Flintham* v. *Roxburgh*, L.R. 17 Q.B.D. 44; 34 W.R. 543; 54 L.T. 797.

(i.) **Q. B. D.**—*Parliament—Ballot Paper—Validity.*—A ballot paper is not void because it has not the official mark on both sides.—*Ackers* v. *Howard; re Thornbury Election Petition*, L.R. 16 Q.B.D. 739; 55 L.J. Q.B. 273; 34 W.R. 609; 54 L.T. 651.

(ii.) **Norwich Petition.**—*Bribery—Single Case—Treating—Costs.*—A single case of bribery by an agent voids the election. Treating is the entertainment of inferiors by superiors in order to secure goodwill. An overloaded petition will be visited with costs even if successful.—*Birkbeck* v. *Bullard*, 54 L.T. 625.

(iii.) **Q. B. D.**—*Parliament—Charges of Returning Officer—Taxation.*—The County Court Judge has no jurisdiction to review the registrar's taxation of a returning officer's accounts.—*R.* v. *Lambeth County Court Judge*, L.R. 17 Q.B.D. 96.

(iv.) **Ipswich Petition.**—*General Bribery and Treating—Travelling Expenses—Illegal Employment.*—General bribery and treating will void an election if proved on the side of the successful candidate: and Judges must report the prevalence of extensive corruption. The offer of travelling expenses is bribery. Money paid to persons to keep order at meetings is illegal within Act of 1883, ss. 17, 28.—*Packard* v. *Collings*, 54 L.T. 619.

(v.) **Barrow Petition.**—*Illegal Employment—Refreshments.*—Gratuitous refreshment to people called "workers": *Held*, an illegal employment within section 17 of Act of 1883, and rendered the election void.—*Schneider* v. *Duncan*, 54 L.T. 618.

(vi.) **Q. B. D.**—*Parliamentary Franchise—Persons Born in Hanover.*—Persons born in Hanover before (and *a fortiori* after) the accession of the Queen and not naturalised, are aliens and not entitled to the Parliamentary franchise.—*In re Stepney Election Petition; Isaacson* v. *Durant*, L.R. 17 Q.B.D. 54; 55 L.J. Q.B. 331; 54 L.T. 684; 34 W.R. 547.

(vii.) **Kennington Petition.**—*Registration Expenses—Starting a Newspaper—Costs of Public Prosecutor.*—Subscription to registration expenses need not be returned as election expenses. Expenses of a newspaper started during an election need not be returned. Where petition is utterly unfounded, petitioner must pay costs of Public Prosecutor.—*Crossman* v. *Gent-Davis*, 54 L.T. 628.

(viii.) **Q. B. D.**—*Returning Officer's Charges—Application to County Court Registrar—38 & 39 Vict., c. 84, s. 4.*—An application to the registrar of County Court to tax the returning officer's charges is good although the judge did not sit in Court within 14 days after the account had been transmitted.—*R.* v. *Bloomsbury County Court Judge*, 54 L.T. 616.

(ix.) **Q. B. D.**—*School Board—Appeal from Commissioner—45 & 46 Vict., c. 5, s. 100, sub-s. 4, Ord. 59, r. 1.*—There is no appeal to the High Court from the decision of a Commissioner appointed to enquire into alleged corrupt practices at School Board elections, except on points of law by way of case stated by the Commissioner.—*E. p. Ayres*, 54 L.T. 296.

(x.) **Q. B. D.**—*Withdrawal of Petition—Costs—Public Prosecutor.*—Corrupt Practices Act, 1883, s. 43, applies only to the public prosecutor's costs at the trial of the petition; if it is withdrawn the Court cannot order his costs to be paid by petitioner. Under section 44 the costs will usually be on the higher scale.—*Pascoe* v. *Puleston; Devonport Petition*, 54 L.T. 733.

See Criminal Law, p. 114, i.

Evidence :—

(i.) **Ch. D.**—*Admissibility—Maps—Note Book—Register of Priory—Church Book of Parish.*—On a question whether a piece of land forms part of a certain parish, the Ordnance Map and other maps were not admitted as evidence. A book in the British Museum containing notes of cases and a document purporting to be the register of a Priory not admitted as evidence of an old action, but an entry in the Church Book of a parish was admitted, the action being one in which the parish was interested. —*Bidder* v. *Bridges* (*No.* 2), 34 W.R. 514; 54 L.T. 529.

(ii.) **C. A.**—*Affidavit—Cross-Examination—Enquiry after Trial—Ord.* 38, *rr.* 21, 28; *Ord.* 37, *rr.* 1, 5, 21, 22.—In an enquiry after trial a witness may be cross-examined on his affidavit if the case requires it, but it is not sufficient for the party desiring to cross-examine merely to serve a notice to that effect.—*De Mora* v. *Concha,* L.R. 32 Ch. D. 133; 34 W.R. 622; 54 L.T. 554.

(iii.) **C. A.**—*Entry by Deceased Person.*—Decision of Ch. D. (*see* Vol. **10**, p. 98, vii.) affirmed.—*Newbould* v. *Smith,* 34 W.R. 690.

(iv.) **Q. B. D.**—*Hostile Witness—Cross-Examination—Discretion of Judge.*—The Judge at a trial has entire discretion as to allowing a witness to be treated as hostile or not. Whether a judge ought to look into extraneous matter to determine whether a witness is hostile *quære.*—*Rice* v. *Howard and another,* L.R. 16 Q.B.D. 681; 34 W.R. 532; 55 L.J. Q.B. 311.

(v.) **C. A.**—*Proof of Deed—Common Law Procedure Act,* 1854, *s.* 26.—Where the attesting witness to a deed is abroad it is enough to prove his handwriting. If evidence as to his handwriting cannot be procured in England, proof of the handwriting of the party to the deed may be admitted.—*In re Rice,* L.R. 32 Ch. D. 35; 54 L.T. 589.

Fraud.—*See* Criminal Law, p. 114, ii. Mortgage, p. 122, ix. Practice, p. 125, xi. Principal and Agent, p. 128, i.

Friendly Society :—

(vi.) **Ch. D.**—*Charity Commissioners—Charitable Trusts Act,* 1853, *ss.* 17, 62. —A friendly society, the funds of which are raised by voluntary contributions, is a charity, but is exempt from the provisions of the Charitable Trusts Act, 1853.—*Pease* v. *Pattinson,* L.R. 32 Ch. D. 154.

(vii.) **C. A.**—*Jurisdiction of County Court.*—Where two societies have amalgamated, members who are dissatisfied with the provisions cannot apply to the County Court under Friendly Societies Act, 1875, s. 25 (7) (d), until the special resolution has been confirmed.—*Jones* v. *Slee,* 34 W.R. 692.

Gas :—

(viii.) **C. A.**—*Company—Accumulation of Profits—Reduction of Price of Gas—Mandamus.*—A mandamus will not lie to compel a gas company to reduce the price of gas and increase its dividend, although it has large reserves of accumulated profits, and although special directions and limitations are given in the Gas Acts with regard to various reserved funds.—*Mason* v. *Ashton Gas Co.,* 54 L.T. 708.

(ix.) **Q. B. D.**—*Jurisdiction of Quarter Sessions.*—There is no power in Quarter Sessions, under Gasworks Clauses Act, 1847, s. 35, to appoint a gas engineer to assist an accountant in examining the affairs of the company.—*R.* v. *Brindley,* 54 L.T. 435.

See Highway, p. 118, vii.

Ground Game:—

(i.) **Q. B. D.**—*Owner occupying his own Land.*—Section 6, Act of 1880, does not apply to an owner of land doing any of the acts prohibited therein upon his own land.—*Smith* v. *Hunt*, 54 L.T. 422.

Highway:—

(ii.) **C. A.**—*Expenses of Paving—Private Road—Street—Apportionment—Public Health Act*, 1875, *ss.* 150, 257.—A private road for the use of which tolls have been levied may be a street. An objection as to the apportionment of expenses of paving can only be made in the manner directed by section 257.—*Midland Railway Co.* v. *Watton*, L.R. 17 Q.B.D. 30; 34 W.R. 524; 55 L.J. M.C. 99; 54 L.T. 482.

(iii.) **C. C. R.**—*Indictment for Non-repair—Supporting Wall out of Repair—Liability to Repair.*—Where a highway is supported by a wall, which is dangerous by reason of non-repair, the inhabitants, if liable to repair the highway, can be convicted; the jury having to determine whether the wall is part of the highway or not.—*R.* v. *Inhabitants of Lordsmere*, 54 L.T. 766.

(iv.) **H. L.**—*New Street—General Line of Buildings—Magistrate's Order—Jurisdiction—Injunction—25 & 26 Vict., c.* 102, *ss.* 74, 75.—Decision of C. A. (*see* Vol. **10**, p. 10, v.) reversed.—*Barlow* v. *St. Mary Abbott's Vestry*, 34 W.R 521.

(v.) **C. A.**—*Nuisance—Fireplug—Duty to Keep in Repair—Waterworks Clauses Act*, 1847, *ss.* 28, 38, 40.—A waterworks company authorized to place fireplugs in a street and required to keep them in repair is not bound to alter the level of the plugs to keep them level with the surface of the street as it wears down.—*Moore* v. *Lambeth Waterworks Co.*, 34 W.R. 559; 55 L.J. Q.B. 304.

(vi.) **Q. B. D.**—*Repairing Street—Mortgagee in Possession.*—A corporation *held* entitled to recover apportionment of expenses of paving street from a mortgagee in possession as a successive owner within the meaning of the Improvement Act. A charge in favour of the corporation by the mortgagor did not preclude them from suing.—*Blackburn Corporation* v. *Micklethwait*, 54 L.T. 539.

(vii.) **Q. B. D.**—*Sea Shore—Gas Works Clauses Act*, 1847, *ss.* 3, 6, 7.—A piece of land between two villages over which the villagers have been accustomed to pass to and fro is not a street, highway, or public place within the Act; mandatory injunction granted to compel gas company to remove pipes laid under it.—*Maddock* v. *Wallasey Local Board*, 55 L.J. Q.B. 267.

(viii.) **C. A.**—*Summary Proceedings for Non-Repair—Admission by Way-Warden*—5 & 6 *Will IV., c.* 50; 25 & 26 *Vict., c.* 61; 41 & 42 *Vict., c.* 77.—Decision of Q. B. D. (*see* Vol. **11**, p. 81, iv.) affirmed.—*Loughborough Highway Board* v. *Curzon*, 34 W.R. 621; 55 L.J. M.C. 122.

See Compensation, p. 113, i. Landlord and Tenant, p. 121, ii. Public Health, p. 128, vi.

Husband and Wife:—

(ix.) **Ch. D.**—*Equity to a Settlement—Foreign Marriage.*—The wife's equity to a settlement does not exist in the case of a foreign marriage where by the law of the domicile there is no such right.—*In re Marsland*, 34 W.R. 540; 54 L.T. 635.

(x.) **Ch. D.**—*Equity to a Settlement—Misconduct of Husband.*—The whole of a wife's funds will be settled upon her when the husband has been guilty of aggravated misconduct towards her.—*Reid* v. *Reid*, 34 W.R. 715.

(i.) **Ch. D.**—*Inchoate Marriage Settlement—Cancellation.*—A marriage engagement having been broken off, the engrossment of the settlement, not being executed by the settlor or the trustees, was declared void after three-and-a-half years, and directed to be given up.—*Bond* v. *Walford*, L.R. 32 Ch. D. 238; 54 L.T. 672.

(ii.) **Q. B. D.**—*Judgment against Separate Estate—Judgment Summons—Committal Order.*—When a judgment has been entered against the separate estate of a married woman limited to that which she is not restrained from anticipating, she cannot be committed to prison under the Debtors' Act as having had means to pay because she has received the income of property which she was restrained from anticipating.—*Darracott* (or *Draycott*) v. *Harrison*, L.R. 17 Q.B.D. 147; 34 W.R. 546.

(iii.) **Q. B. D.**—*Libel of Husband on Wife—Criminal Proceedings—Evidence.*—A wife cannot prosecute her husband for a libel against herself nor give evidence against him on such a charge.—*R.* v. *Lord Mayor of London and Vance*, L.R. 16 Q.B.D. 772; 55 L.J. M.C. 118; 54 L.T. 761; 34 W.R. 544.

(iv.) **Q. B. D.** — *Post-Nuptial Torts of Wife — Liability of Husband.*— Husband and wife may be sued jointly for wife's post-nuptial costs notwithstanding M. W. P. Act, 1882.—*Seroka* v. *Kattenburg*, L.R. 17 Q.B.D. 177; 34 W.R. 542; 54 L.T. 649.

(v.) **C. A.**—*Restraint on Anticipation—Costs Occasioned by Married Woman.*—The costs of proceedings improperly instituted by a married woman suing by a next friend cannot be ordered to be retained out of future income which she is restrained from anticipating.—*Ellis* v. *Johnson; re Glanvil*, L.R. 31 Ch. D. 532; 55 L.J. Ch. 325; 54 L.T. 411.

(vi.) **Ch. D.**—*Settlement—Covenant to Settle after Acquired Property.*—Property to which a woman was entitled, unknown to herself, at the date of her marriage settlement, but which could only be recovered by setting aside a release executed before the settlement, is after acquired property, and when recovered is bound by a covenant to settle after acquired property.—*Robinson* v. *Gandy; re Garnett*, L.R. 31 Ch. D. 648.

(vii.) **C. A.**—*Settlement—Covenant to Settle after Acquired Property—Volunteer claiming Benefit.*—A covenant to settle property over which the wife should have an absolute power of appointment, applies to property settled on her for life, and after her death as she might appoint. The maxim that that which ought to have been done is considered as done, only applies (in cases of contract) in favour of persons who had a right to enforce the contract; therefore a covenant to settle after acquired property will not be enforced or treated as operative in favour of the heir-at-law of the wife not being within the consideration of the marriage.—*In re Anstis; Chetwynd* v. *Morgan; Morgan* v. *Chetwynd*, L.R. 31 Ch. D. 596; 54 L.T. 742.

See Administration, p. 106, vii. Bankruptcy, p. 108, iv. Settlement, p. 129.

Infant:—

(viii.) **Ch. D.**—*Custody.*—A wife having left her home without reasonable cause, the Court ordered her forthwith to deliver up the child to her husband.—*Constable* v. *Constable*, 34 W.R. 649.

(ix.) **Ch. D.**—*Maintenance—Appointment of Guardian—Legacy to Infant—Trustee Acts.*—An infant was entitled to a legacy under the will of her father, a domiciled Scot. The will was in Scotch form and contained no express trust for maintenance. The Court of Session appointed a *curator bonis* who received and invested the legacy in the sole name of the infant in stock, transferable at the Bank of England. The income

was insufficient for maintenance and education. The curator was authorised to make occasional small advances out of capital for education. *Held*, the infant was a trustee of the stock within the Trustee Acts, and an order was made vesting right to transfer in *curator* as next friend (appointed guardian) and to apply proceeds towards maintenance, the dividends being paid to him.—*Re Findlay*, L.R. 32 Ch. D. 221; 55 L.J. Ch. 395.

(i.) **C. A.**—*Polygamous Marriage—Custody of Children.*—Decision of Ch. D. (*see* Vol. **11**, p. 48, viii.) affirmed.—*Re Ullee*, 54 L.T. 286.

See Settlement, p. 129, vi. Solicitor, p. 132, vii. Will, p. 135.

Insurance :—

(ii.) **C. A.**—*General Words—Perils Insured Against.*—Policy in ordinary form on ship and machinery, including donkey-engine. The engine was employed in the ordinary course to pump water into boilers, and by negligence or accident it was split open. *Held*, the injury was a peril insured against under general words of the policy.—*Hamilton* v. *Thames and Mersey Ins. Co.*, L.R. 17 Q.B.D. 195 ; 34 W.R. 674.

(iii.) **Q. B. D.**—*Life—Assignment of Policy Abroad.*—An assignment abroad of policy made in England is governed by the *lex loci* of the assignment. —*Lee* v. *Abdy*, 34 W.R. 653.

(iv.) **C. A.**—*Marine.*—A policy included all risk "till safely landed." On arrival the goods were transhipped by lighters in accordance with a proved custom and were lost. *Held*, loss not covered by the policy.—*Houlder* v. *Merchant Marine Ins. Co.*, 34 W.R. 673.

(v.) **C. A.**—*Marine—Material Facts—Ignorance of Assured—Knowledge of Agent.*—Assurance effected by assurer in ignorance of material facts which were known to his agents and purposely withheld by them: *Held*, not enforceable.—*Blackburn* v. *Vigors*, 55 L.J. Q.B. 347.

(vi.) **P. C.**—*Receipt of Premiums—Specific Appropriation.*—A sum was remitted by agents for an insurance office "for premiums," the amount being, to the knowledge of the office, in excess of what the agents owed, and the terms on which certain lapsed policies should be renewed by the office having been ascertained by consent: *Held*, although there was no specific appropriation, it must be taken to have been received on account of premiums on lapsed policies.—*Kirkpatrick* v. *South Australian Ins. Co.*, L.R. 11 App. Ca. 177.

(vii.) **Q. B. D.**—*Wagering Policies—Recovery of Premiums—14 Geo. III., c.* 48, *ss.* 1, 2; 8 *&* 9 *Vict., c.* 109, *s.* 18.—A policy on the life of a person in whom the insurer has no insurable interest is a wagering policy, and premiums paid in respect of it cannot be recovered back.—*Howard* v. *Refuge Friendly Society*, 54 L.T. 644.

Interpleader :—

(viii.) **Q. B. D.**—*Part of Claim.*—A debtor against whom an action has been brought, and who has had notice of assignment, may interplead as to part only and dispute the residue.—*Reading* v. *School Board of London*, L.R. 16 Q.B.D. 686; 34 W.R. 609; 54 L.T. 678.

(ix.) **C. A.**—*Summary Decision of Master—Appeal—Appeal to Court of Appeal —Ord.* 54, *rr.* 12, 21—*Ord.* 57, *rr.* 8, 11.—There is an appeal to the judge in chambers from the summary decision of a master on an interpleader summons, but no appeal from the decision of the judge to the Court of Appeal. An order of a master refusing an issue and adjourning the summons that he might dispose of it summarily is a summary decision.—*Bryant* v. *Reading*, L.R. 17 Q.B.D. 128; 34 W.R. 496 ; 55 L.J. Q.B. 253 ; 54 L.T. 300, 524.

Landlord and Tenant:—

(i.) **C. A.**—*Agreement for Lease for over Three Years—Breach of Covenant—Tenant at Will.*—When the tenant under an agreement for a lease for more than three years enters in possession but has paid no rent, he is only a tenant at will.—*Coatsworth* v. *Johnson*, 55 L.J. Q.B. 220; 54 L.T. 520.

(ii.) **Q. B. D.**—*Covenant to Pay Rates, &c.—Owner's Proportion of Paving Street.*—Under a covenant to pay all outgoings whatsoever, payable either by the landlord or tenant, the lessee *held* liable to pay the owner's proportion of paving the street under 25 & 26 Vict., c. 102, s. 96.—*Aldridge* v. *Ferne*, L.R. 17 Q.B.D. 212; 34 W.R. 578.

(iii.) **C. A.**—*Privileged Goods—Ships being Built and Paid for by Instalments.*—A ship which was being built and paid for by instalments is not privileged from distress although some of the instalments have been paid.—*Clarke* v. *Millwall Dock Co.*, 34 W.R. 698.

See Railway, p. 129, ii.

Libel:—

(iv.) **P. C.**—*Privilege.*—The privilege which covers fair and accurate reports of proceedings in Parliament and in courts of law does not extend to reports of statements made to editors of newspapers.—*Davis* v. *Shepstone*, L.R. 11 App. Ca. 187.

See Husband and Wife, p. 119, iii.

License:—

(v.) **Q. B. D.**—*Club—Unauthorised Sale by Steward.*—Liquor was sold on club premises by the steward against the orders, and without the knowledge or assent of the committee: *Held*, the conviction of members of the committee was wrong.—*Newman* v. *Jones*, L.R. 17 Q.B.D. 132; 55 L.J. M.C. 113.

(vi.) **Q. B. D.**—*Inn—Record of Conviction on License.*—Where a licensed person is convicted of an offence under the Licensing Acts, 1872-74, and it is ordered to be recorded on his license, the owner of the licensed premises, who was not and could not have been a party to the proceedings, is not a "person aggrieved" within section 52 of the Act of 1872, and has no right of appeal.—*Hammans* v. *Justices of Andover*, L.R. 16 Q.B.D 711.

(vii.) **Q. B. D.**—"*Special Occasion.*"—It is for the justices to determine what is a "special occasion" in their own district, on which a license exempting from the closing regulations may be granted.—*Devine* v. *Keeling*, 34 W.R. 718.

Limitation:—

(viii.) **C. A.**—*Negligence—Fraudulent Concealment.*—Decision of Q. B. D. (*see* Vol. **11**, p. 83, vi.) affirmed.—*Armstrong* v. *Milburn*, 54 L.T. 723.

See Easement, p. 115, vi.

Lunatic:—

(ix.) **C. A.**—*Jurisdiction—Appointment in place of Lunatic Trustee—Land in Ireland—Vesting Order—Trustee Act*, 1850, *s.* 54.—On a petition, entitled both in chancery and in lunacy, a new trustee may be appointed in place of a lunatic under the jurisdiction in lunacy; and land in Ireland may be vested in him under the jurisdiction in chancery.—*Re Smyth*, 34 W.R. 493.

(i.) **C. A.**—*Maintenance—Jurisdiction.*—The Chancery Division has jurisdiction to direct the application of capital as well as income for the maintenance of a person of unsound mind not so found.—*Re Tuer's Trusts*, L.R. 32 Ch. D. 39; 55 L.J. Ch. 454.

(ii.) **C. A.**—*New Trustee.*—Where one of several trustees becomes lunatic, and a new trustee has been validly appointed under a power in his place, the Court will not re-appoint as new trustees those who have already been validly appointed.—(*Re Pearson*, L.R. 5 Ch. D. 982, not followed), *re Vicat*, 34 W.R. 645.

(iii.) **C. A.**—*Petition for Appointment of Trustee in Place of Lunatic—Service.*—The service of a petition for appointment of a new trustee in place of a lunatic on one of the beneficiaries who was in Australia was dispensed with. The consent of the new trustee to act must be proved by affidavit according to the old practice, the Ord. 38, r. 19a, not applying to lunacy.—*In re Wilson*, L.R. 21 Ch. D. 522.

See Company, p. 112, iii.

Master and Servant:—

(iv.) **C. A.**—*Confidential Clerk—Ground for Dismissal.*—Decision at N. P. (*see* Vol. **11**, p. 84, viii.) affirmed.—*Pearce* v. *Foster*, 34 W.R. 602; 55 L.J. Q.B. 306; 54 L.T. 664.

(v.) **Q. B. D.**—*Employers Liability Act*, 1880, *s.* 1, *sub-s.* 1—*Defect in "Works."*—"Works," in section 1, means works already completed, and not works in course of construction which, when completed, will be connected with or used in the employer's business.—*Howe* v. *Finch*, L.R. 17 Q.B D. 187.

See Bankruptcy, p. 108, vi. Company, p. 112, vi.

Mayor's Court:—

(vi.) **Q. B. D.**—*Certiorari—Discretion of Judge.*—A party is not entitled as of right to remove an action by *certiorari* into the High Court.—*Cherry* v. *Endean*, 55 L.J. Q.B. 292; 54 L.T. 763.

Mortgage:—

(vii.) **C. A.**—*Appeal—Foreclosure—Ord.* 58, *r.* 15.—A foreclosure order *nisi* is, for the purposes of appeal, a final order, and an appeal may be made within a year though the order absolute has been made in the meantime.—*Smith* v. *Davies*, L.R. 31 Ch. D. 595; 55 L.J. Ch. 496; 54 L.T. 478.

(viii.) **C. A.**—*Costs Incurred by Mortgagee—Equitable Mortgagee.*—An equitable mortgagee with an agreement for a legal mortgage is entitled to be repaid the costs of preparing the legal mortgage and of correspondence with the mortgagor, but not those of investigating the title. A mortgagee is entitled to the costs properly incurred with reference to the mortgage debt as costs of an attempt to get payment from a surety.—*National Provincial Bank of England* v. *Games*, L.R. 31 Ch. D. 582; 34 W.R. 600; 54 L.T. 696.

(ix.) **C. A.**—*Equitable Deposit—Priority—Fraud.*—A degree of negligence not amounting to fraud is sufficient to fix a person claiming under an equitable title, as distinct from a person having the legal estate, with notice of facts which, but for such negligence, he would have discovered.—*National Provincial Bank* v. *Jackson*, 54 W.R. 597.

(x.) **Ch. D.**—*Foreclosure—Personal Order for Payment.*—If defendant denies in his statement of defence any sum being due, but admits it at the trial, an order will be made for immediate payment of the principal.—*Instone* v. *Elmslie*, 34 W.R. 592; 54 L.T. 730.

(i.) **Ch. D.**—*Foreclosure—Receiver.*—Foreclosure order made absolute and receiver ordered to pay to plaintiff balance in his hands without fresh accounts being taken —*Hoare* v. *Stephens*, L.R. 32 Ch. D. 194; 55 L.J. Ch. 511.

(ii.) **Ch. D.**—*Foreclosure—Request for Sale by Parties Interested.*—In foreclosure action by first mortgagee, the second and third requested a sale giving evidence of increased value. *Held*, no power to grant request; even under Conveyancing Act, 1881, s. 25, sub-s. 2.—*Merchant Banking Co.* v. *London and Hanseatic Bank*, 55 L.J. Ch. 479.

(iii.) **Ch. D.**—*Foreclosure Absolute—Delivery of Possession.*—Under Ord. 18, r. 2 (1885), the Court can order delivery of possession in a foreclosure action where it is asked, against the mortgagor, even though it is not asked in the writ or claim.—*Salt* v. *Edgar*, 54 L.T. 374.

(iv.) **Ch. D.**—*Foreclosure Action—Order for Sale—Conduct of Sale—Security.*—An order for sale having been made: *Held*, defendants ought to have the conduct of it, and that they need not give security.—*Davies* v. *Wright*, L.R. 32 Ch. D. 220.

(v.) **C. A.**—*Intestate Mortgagee of Realty, without Heir—Right to Redeem.*—A mortgage of real and personal estate contained a power of sale. Mortgagor died intestate as to realty and without heir. *Held*, the legal personal representative entitled to redeem the whole; the reconveyance of the realty to him being made subject to the rights or equity of redemption which might exist in any other person.—*Hall* v. *Heward*, 34 W.R. 571; 54 L.T. 603.

(vi.) **Ch. D.**—*Joinder of Claims for Foreclosure and on Covenant—Liquidated Demand.*—Under Ord. 13, r. 3, a mortgagee who has joined his claims, is entitled, in default of appearance, to defer judgment for the liquidated demand, but not to foreclosure judgment.—*Bissett* v. *Jones*, 34 W.R. 591.

(vii.) **C. A.**—*Mortgagee in Possession — Mortgage of Two Estates—Equities between Mortgagors.*—A mortgagee does not, by intercepting the rents of the mortgaged property after they have been received by the agent of the mortgagor, constitute himself mortgagee in possession.—Equitable rights existing between two mortgagors of separate estates to secure one debt do not affect the mortgagee who concurs in a sale of one estate and allows the mortgagor of that estate to receive part of the purchase money.—*Noyes* v. *Pollock*, L.R. 32 Ch. D. 53; 55 L.J. Ch. 513; 54 L.T. 473.

(viii.) **Ch. D.**—*Priority—Constructive Notice—Solicitor—Conveyancing Act, 1882, s. 3, sub-s. 1, cl. 2.*—A mortgagee is not affected with notice of a prior charge, in consequence of his solicitor having in a previous transaction acquired knowledge of the prior charge.—*In re Cousins*, L.R. 31 Ch. D. 671; 54 L.T. 377.

(ix.) **C. A.**—*Priority—Two Properties of one Mortgagor — Foreclosure.*—Decision of Ch. D. (see Vol. 9, p. 104, v.) affirmed.—*Mutual Life Association* v. *Langley*, 54 L.T. 326.

(x.) **Ch. D.**—*Real Estate—Power of Executors to Mortgage—Lord St. Leonard's Act, ss. 16, 18.*—The power to mortgage given to executors by Lord St. Leonard's Act applies to property which is devised to one for life with remainder over.—*Pennington* v. *Payne; re Wilson*, 34 W.R. 512; 54 L.T. 600.

(xi.) **Ch. D.**—*Receiver—Mortgagee in Possession—Judicature Act, 1873, s. 25, sub-s. 8.*—A mortgagee in possession is entitled to have a receiver appointed.—*Mason* v. *Westoby*, L.R. 32 Ch. D. 206; 34 W.R. 498; 56 L.J. Ch. 507; 54 L.T. 526.

(i.) **Ch. D.**—*Redemption—Limit of Doctrine of Consolidation.*—A third mortgagee held entitled to redeem two prior mortgages: and a second mortgagee held not entitled to consolidate his mortgage with prior mortgages which had been transferred to him.—*Bird* v. *Wenn*, 34 W.R. 652.

(ii.) **C. A.**—*Right to Follow Assets of Deceased Mortgagor—Stale Demand.*—Decision of Ch. D. (*see* Vol. **11**, p. 48, v.) affirmed.—*Blake* v. *Gale*, 34 W.R. 555; 55 L.J. Ch. 319.

(iii.) **Ch. D.**—*Timber—Cutting by Mortgagor—Injunction.*—A mortgagor *held* to have a right to have the timber left standing.—*Harper* v. *Aplin*, 54 L.T. 383.

See Building Society, p. 110, iv. Colonial Law, p. 111, i. Company, p. 111, v. Highway, p 118, vi. Trustee, p. 134, v. Vendor and Purchaser, p. 135, ii.

Municipal Law :—

(iv.) **Q. B. D.**—*By-Law—Unreasonableness.*—A by-law by the council of a borough prohibiting music in the streets on Sunday: *Held*, unreasonable and *ultra vires*, and therefore void.—*Johnson* v. *Mayor of Croydon*, L.R. 16 Q.B.D. 708; 55 L.J. M.C. 117; 54 L.T. 295.

Negligence :—

(v.) **Q. B. D.**—*Tramway.*—The General Tramways Act, 1870, s. 55, applies only to a wrongful act or default, and does not make the promoters or lessees answerable for mere accident caused without negligence by their use of tramcars.—*Brocklehurst* v. *Manchester and Bury Tramways Co.*, L.R. 17 Q.B.D. 118; 34 W.R. 568.

Parliament.—*See* Election, p. 116.

Partnership :—

(vi.) **Ch. D.**—*Dissolution—Notice.*—When a partnership has been dissolved by mutual consent, the Court has jurisdiction to order the signature of a proper notice of the dissolution for insertion in the *London Gazette.*—*Hendry* v. *Turner*, L.R. 32 Ch. D. 355; 34 W.R. 513; 54 L.T. 292.

(vii.) **Ch. D.**—*Solicitors—Liability of Firm for Fraud of Partner.*—Where a member of a firm borrows money on a legal mortgage of property of his own, which has been equitably mortgaged to a client of the firm, whereby the client's money is lost, he does not commit a fraud in the course of the business so as to make the firm liable.—*Hughes* v. *Twisden*, 34 W.R. 498; 55 L.J. Ch. 481; 54 L.T. 570.

See Banker, p. 107, i. Practice, p. 127, xi.

Patent :—

(viii.) **C. A.** — *Patent — Injunction against Infringement — Bankruptcy of Defendant—Appeal.*—A person who has become bankrupt after being restrained by injunction from infringing a patent, has such an interest in being relieved from the injunction as to entitle him to appeal on giving security for costs.—Order made dismissing the appeal, unless within a fixed time the bankrupt gave security for costs, or the trustee in bankruptcy made himself a party.—*United Telephone Co.* v. *Bassano*, L.R. 31 Ch. D. 630; 34 W.R. 537; 54 L.T. 479.

(ix.) **Ch. D.**—*Specification—Sufficiency of Description.*—A patentee cannot include in his final specification a method of carrying his invention into effect of which he was not aware when he filed his provisional specification.—*Edison Co.* v. *Woodhouse*, 34 W.R. 626.

(i.) **Ch. D.**—*Threatening Legal Proceedings—Patents Act*, 1883, *s.* 32.—Threats of legal proceedings made by private letters are within the meaning of the Patents, Designs, and Trade Marks Act, 1883, and not merely threats by means *ejusdem generis* with circulars and advertisements.—*Driffield and East Riding Cake Co.* v. *Waterloo Mills Cake Co.*, L.R. 31 Ch. D. 638; 55 L.J. Ch. 391.

See Trade-mark, p. 133, vi.

Poor Law:—

(ii.) **C. A.**—*Rating—Board School.*—In calculating, for rating a School Board, the annual rent to be reasonably expected, the School Board itself must not be excluded from the list of possible tenants.—*London School Board* v. *Shoreditch Assessment Committee*, 34 W.R. 583.

(iii.) **Q. B. D.**—*Rating—Leasehold Manufactory—Plant.*—In assessing a leasehold manufactory, plant, the property of the lessees, not permanently attached to the freehold, must be taken into account if it is essential for carrying on the business.—*Tyne Boiler Works Co.* v. *Tynemouth Union*, 34 W.R. 531; 55 L.J. M.C. 130; 54 L.T. 612.

(iv.) **C. A.**—*Waterworks—Water Rates in Aid of Water Rents—Rateability—Deduction for Repairs—Rateable Value of Works.*—Decision of Q. B. D. (*see* Vol. **11**, p. 88, v.) affirmed.—*Dewsbury, &c., Waterworks Board* v. *Penistone Assessment Committee*, 34 W.R. 622; 55 L.J. M.C. 121; 54 L.T. 592.

(v.) **Q. B. D.**—*Settlement—Break of Residence*—39 *&* 40 *Vict.*, *c.* 61, *s.* 34.—A temporary absence to fulfil part of the duties of a servant is not a break of residence.—*Overseers of Manchester Union* v. *Guardians of Ormskirk Union.*—L.R. 16 Q.B.D. 723; 34 W.R. 533; 54 L.T. 573.

Practice:—

(vi.) **Ch. D.**—*Affidavit of Documents—Land—Privilege.*—In action for recovery of land and delivery of deeds, the defence of purchaser for valuable consideration without notice entitles the defendant to privilege from discovering deeds and documents in his possession relating to the land.—*Emmerson* v. *Ind*, 34 W.R. 636; 54 L.T. 757.

(vii.) **C. A.**—*Appeal—Abandonment.*—The C. A. will not dismiss an appeal with costs on an *ex parte* application of appellant.—*Ormerod* v. *Bleasdale*, 54 L.T. 343.

(viii.) **C. A.**—*Appeal—Stay.*—Proceedings will not be stayed pending an appeal in an Admiralty case where bail has been given for damages, except on special grounds.—*The Annot Lyle*, 34 W.R. 647.

(ix.) **C. A.**—*Costs—Two Plaintiffs—Apportionment.*—Where, of two plaintiffs one is unsuccessful, the defendant is only entitled to the costs occasioned by the joinder, and not to half costs of suit.—*Gort* v. *Rowney*, 34 W.R. 696; (in Q. B. D. reversed) 55 L.J. Q B. 319.

(x.) **Q. B. D.**—*Debtors Act*, 1869—*Avoidance of Judgment.*—Where a judgment obtained by consent is void for non-compliance with 32 & 33 Vict., c. 62, s. 27, the Court will refuse leave to issue execution under Ord. 42, r. 23. The defendant is not estopped from setting up the invalidity of a judgment merely on the ground that it has not been set aside.—*Jones* v. *Jaggar*, 54 L.T. 731.

(xi.) **C. A.**—*Discovery—Allegation of Fraud on the Part of Agent—Ord.* 19, *r.* 6—*Ord.* 31, *r.* 20.—An allegation by the plaintiff that the defendant, his agent, had fraudulently sold him his own property is sufficient to entitle the plaintiff to discovery of the defendant's dealings.—*Leitch* v. *Abbott*, 34 W.R. 506; 55 L.J. Ch. 460.

(i.) **Ch. D.**—*Garnishee Order—Priorities—Equitable Charge.*—A garnishee order, under Ord. 45, only charges what the judgment debtor can honestly deal with himself; the debt must be one in which he has a beneficial interest.—*Re General Horticultural Co.*, 34 W.R. 681.

(ii.) **Ch. D.**—*Interrogatories—Leave to Deliver.*—On a summons for leave under Ord. 31, r. 1, there must be some statement of the reason for interrogating, and of the general scope of the questions. But it need not be in writing, nor need the specific questions be given.—*Martin* v. *Spicer*, 34 W.R. 589; 54 L.T. 598.

(iii.) **C. A.**—*Interrogatories—Name of Witnesses.*—Defendant in an action for libel is entitled to discovery of names and addresses of persons who are mixed up with the substantial part of the case, although they are likely to be called as witnesses.—*Marriott* v. *Chamberlain*, L.R. 17 Q.B.D. 154; 54 L.T. 714.

(iv.) **Ch. D.**—*Interrogatories—Summons for Leave to Deliver—Duty of Chief Clerk—Ord.* 31, *rr.* 1, 3, 6.—It is not the duty of the Chief Clerk, on a summons for leave to deliver interrogatories, to settle or amend the interrogatories, but only to consider their relevancy.—*Swabey* v. *Dovey*, L.R. 32 Ch. D. 352; 34 W.R. 510; 54 L.T. 368.

(v) **Ch. D.**—*Joinder of Parties—Ord.* 16, *r.* 11.—In action on covenant by defendant with plaintiff to make road for himself and two others with whom similar covenants were entered into, the other covenantees were, on the application of defendant, ordered to be joined.—*Dix* v. *Great Western Ry.*, 34 W.R. 712.

(vi.) **C. A.**—*Judgment by Default—Application to Set Aside—Chancery of Lancaster Rules*, 1884, *Ord.* 33, *r.* 21—*Extension of Time.*—Application to set aside a judgment by default must be made within six days if the Court sits for six days after the judgment. It is not necessary to make a separate motion for extension of time for an application.—*Bradshaw* v. *Warlow*, 34 W.R. 557; 54 L.T. 438.

(vii.) **C. A.**—*Judgment Creditor—Elegit—Order for Receiver—Registration—27 & 28 Vict.*, c. 112, *ss.* 1, 2, 3.—A judgment creditor obtained an order for a receiver of certain mortgaged lands of the debtor. *Held*, registration of the order was unnecessary, and the judgment creditor entitled to be preferred to a subsequent purchaser of the equity of redemption.—*Re Pope*, 34 W.R. 654, 693.

(viii.) **H. L.**—*New Trial—Verdict against Evidence.*—A new trial will only be granted when the verdict was one which the jury could not reasonably nor properly have found.—*Metropolitan Ry. Co.* v. *Wright*, L.R. 11 App. Ca. 152; 54 L.T. 658.

(ix.) **Q. B. D.**—*Notice of Motion—Amendment.*—Notice having been given for a day not in the sittings, the Court allowed an amendment.—*Williams* v. *De Boinville*, L.R. 17 Q.B.D. 180; 54 L.T. 732; 34 W.R. 702.

(x.) **Q. B. D.**—*Notice of Motion—Appeal from Chambers.*—A notice of motion is bad when given for a day on which the Court cannot, according to law, be sitting; and the time will not be extended.—*Maullin* v. *Rogers*, 34 W.R. 592.

(xi.) **C. A.**—*Order upon Admissions—Ord.* 32, *r.* 6.—Order of Ch. D. (*see* Vol. **11**, p. 90, x.) discharged.—*Landergan* v. *Feast*, 34 W.R. 691.

(xii.) **Ch. D.**—*Payment out of Court.*—Application for payment out of Court of money paid in under Trustee Relief Act should be by petition and not by summons under Ord. 55.—*Re Evan Evans*, 54 L.T. 527.

(i.) **Ch. D.**—*Payment out of Court—Sum exceeding £1,000—Ord.* 55, *r.* 2, *sub-r.* 1.—Application for payment out of Court of a sum exceeding £1,000 should be by petition, not summons.—(*Re Brandram*, L.R. 25 Ch. D. 366; 32 W.R. 180 dissented from); *Re Rhodes*, 34 W.R. 501; 55 L.J. Ch. 477; 54 L.T. 294.

(ii.) **P. D.**—*Preliminary Acts—Ord.* 19, *r.* 28.—The question in the preliminary Act must be answered fully.—*The Godiva*, 34 W.R. 551.

(iii.) **C. A.**—*Security for Costs.*—A person out of the jurisdiction, not a party to the action, and claiming to be interested in the subject of an action, and serving a notice of motion in the action, ordered to give security for the costs of the motion.—*Apollinaris Co.* v. *Wilson*, L.R. 31 Ch. D. 632; 34 W.R. 537; 54 L.T. 478.

(iv.) **C. A.**—*Service out of the Jurisdiction—Company Order for Payment of Calls.*—Decision of Ch. D. (*see* Vol. **11**, p. 92, v.) affirmed.—*Re Anglo-African S. S. Co.*, L.R. 32 Ch. D. 348; 34 W.R. 554.

(v.) **C. A.**—*Service out of the Jurisdiction—Originating Summons.*—The Court cannot order service out of the jurisdiction of an originating summons.—*In re Busfield; Whaley* v. *Busfield*, L.R. 32 Ch. D. 123; 55 L.J. Ch. 467.

(vi.) **P. C.**—*Special leave to Appeal.*—Where by the terms of an agreement the powers of the Supreme Court (of Canada) were defined to be a final disposition of all contentions, the Court was *held* to be acting under the terms of a special reference entirely, and not as a C. A. Special leave to appeal refused.—*A.-G. of Nova Scotia* v. *Gregory*, L.R. 11 App. Ca. 229.

(vii.) **Q. B. D.**—*Striking out Claim—Malicious Prosecution—Ord.* 25, *r.* 4.—Where a statement of claim discloses some ground of action, the mere fact that it is not likely to succeed is no ground for striking it out.—*Boaler* v. *Holder*, 54 L.T. 298.

(viii.) **C. A.**—*Time—Interlocutory Order - Ord.* 58, *r.* 15.—On order made in chambers on the application of the administratrix, defendant in an administration action, directing taxation of costs and application of the funds in Court in payment of a debt, and then *pro tanto* in payment of the taxed costs, is interlocutory and not final, and cannot be appealed against after 21 days.—*In re Lewis; Lewis* v. *Williams*, L.R. 31 Ch. D. 623.

(ix.) **Ch. D.**—*Venue—Amended Claim.*—Under Ord. 36, r. 1, the plaintiff is entitled to name the place of trial in an amended statement of claim. —*Locke* v. *White*, 34 W.R. 648.

(x.) **C. A.**—*Verdict against Evidence—Ord.* 58, *r.* 4.—Where a Court is satisfied that the verdict is against the weight of evidence, and that all the facts are before it, it may enter judgment accordingly instead of sending the case for a new trial.—*Millar* v. *Toulmin*, 34 W.R. 695.

(xi.) **Q. B. D.**—*Writ—Firm out of Jurisdiction—Service on Partner Temporarily within Jurisdiction—Ord.* 9, *r.* 6.—Service of a writ issued against a firm out of the jurisdiction on a member of the firm who is temporarily within the jurisdiction is good, and judgment would be against the firm, though execution could only go against the partner served.—*Pollexfen* v. *Sibson*, L.R. 16 Q.B.D. 792; 34 W.R. 534; 55 L.J. Q.B. 294; 54 L.T. 297.

See Administration, p. 105. Bankruptcy, p. 107. Bastardy, p. 109. County Court, p. 113. Evidence, p. 117. Husband and Wife, p. 118. Interpleader, p. 120. Mortgage, p. 122. Patent, p. 124. Principal and Surety, p. 128. Railway, p. 128.

Principal and Agent:—

(i.) **Q. B. D.**—*Corporation—Misrepresentation—Liability of Principal.*—A former secretary, the plaintiffs not having had notice that he had ceased to be so employed, induced them to advance money on security of certain transfers of stock by falsely representing that the transferor was entitled to it. *Held*, company liable, although they had derived no benefit.—*British Mutual Bank* v. *Charnwood Forest Ry.*, 34 W.R. 718.

(ii.) **Ch. D.**—*Custom of Stock Exchange—Liability of Transferee of Shares.*—Purchase by brokers of shares in joint stock bank: the bought note did not specify the numbers of the shares. Before settling day the bank was ordered to be wound-up. Purchasers' solicitors repudiated the contract. The purchaser wrote to brokers saying he would support the position they had assumed. They had returned his name as purchaser. *Held*, he was equitable owner of the shares and bound to indemnify the sender.—*Loring* v. *Davis*, 34 W.R. 701.

(iii.) **Q. B. D.**—*Estate Agent—Revocation of Authority—Right to Commission.* —In a question arising on a sale to a person originally introduced but after revocation of authority, it is a question for the jury whether the ultimate sale was due to the original introduction.—*Lumley* v. *Nicholson*, 34 W.R. 716.

See Company, p. 111, vii. Criminal Law, p. 114, ii. Insurance, p. 120, v. Practice, p. 125, xi.

Principal and Surety:—

(iv.) **N. P.**—*Bond giving Surety under Ord. 14—Judgment by Consent—Variation of Liability.*—A joint and several bond was entered into by defendants as a condition for leave to defend. One only of the parties consented to a judgment: *Held*, the other was discharged.—*Tatum* v. *Evans*, 54 L.T. 336.

Public Health:—

(v.) **Q. B. D.**—*Improvement Commissioners—Urban Sanitary Authority—Act of* 1875, *ss.* 5, 10, 12, 264, 341.—Improvement commissioners in exercising powers conferred on them originally by local acts are, since 1875, acting under the Public Health Act, and are entitled to privileges given by it to members of Local authorities. — *Lea* v. *Facey*, L.R. 17 Q.B.D. 139.

(vi.) **H. L.**—*Paving—Validity of Notice.*—The sanitary authority having given notice to pave a street in a specific manner, and the order having been disobeyed, they did the work themselves, but not in precisely the manner specified. *Held*, not sufficient to prevent them from recovering his share from the person who had disobeyed the order.—*Acton Local Board* v. *Lewsey*, L.R. 11 App. Ca. 93; 54 L.T. 657.

Public Prosecutor.—*See* Election, p. 116, x.

Railway:—

(vii.) **C. A.**—*Abandonment—Compensation out of Parliamentary Deposit.*—Act authorising railway provided for payment of compensation out of deposit for property rendered less valuable by abandonment. *Held*, no compensation could be awarded in respect of the non-erection of a station, and failure to fence land taken in accordance with the covenants of the conveyance to the railway, which was abandoned.—*E. p. Hughes' Trustees; re Ruthin Ry.*, 34 W.R. 580.

(i.) **C. A.**—*Case Stated by Railway Commissioners—Appeal from Divisional Court—Regulation of Railways Act*, 1873, *s.* 26—*Judicature Act*, 1873, *s.* 45—*Appellate Jurisdiction Act*, 1876, *s.* 20.—The decision of a Divisional Court on a case stated by the railway commissioners is final. —*Hall & Co.* v. *London, Brighton and South Coast Ry. Co.*, L.R. 17 Q.B.D. 230 ; 34 W.R. 558; 54 L.T. 713 ; 55 L.J. Q B. 328.

(ii.) **Q. B. D.**—*Distraint—Rolling Stock in a " Work."*—An engine standing in a shed rented by contractor and connected with railway by a siding, *held* to be in a " work " under section 3, Railway Rolling Stock Protection Act, 1872, and not liable to distress for rent payable by the tenant.—*Easton Estate Co.* v. *Western Waggon Co.*, 54 L.T. 735.

(iii.) **C. A.**—*Luggage Left in Charge of Porter—Negligence.*—Decision of Q. B. D. (*see* Vol. **11**, p. 57, v.) reversed.—*Bunch* v. *G. W. Ry.*, L.R. 17 Q.B.D. 215 ; 34 W.R. 574.

School Board.—*See* Election, p. 116, ix. Poor Law, p. 125, ii.

Scotch Law :—

(iv.) **H. L.**—*Sale of Goods—Delivery.*—Appropriation and acceptance of a specific chattel perfects the contract of sale, and gives the purchaser a right to demand delivery, but the property does not pass until delivery. —Mercantile Law Amendment Act, 1856, s. 1, imposes no limitation on the right of the vendor's creditors to attach goods in his custody until a contract for sale has been perfected.—*Seath* v. *Moore*, 54 L.T. 690.

Sea Shore.—*See* Highway, p. 118, vii.

Settlement :—

(v.) **Ch. D.**—*Accumulation—Maintenance.*—Where there is a settlement by will, subject to a prior trust for accumulation of the whole income for a legal number of years, the Court has, in the absence of special circumstances, no jurisdiction to order an allowance out of income for maintenance of the person who will, if living at the end of the term, be the tenant for life : even if there is no other way of providing for his maintenance.—*Hunt* v. *Parry ; re Alford*, L.R. 32 Ch. D. 383 ; 54 L.T. 674.

(vi.) **Ch. D.**—*Building Leases—Infant Tenant in Tail.*—The infant tenant in tail in possession was 18, and Court refused to grant to the trustees general authority to grant building leases, but gave the authority subject to the approval of the Court in each case.—*Cecil* v. *Langdon*, 54 L.T. 418

(vii.) **C. A.**—*Gift of Annuity—Satisfaction.*—An annuity charged on realty was settled by a father on the son's marriage. By his will he gave his son legacies, the income from which was greater than the annuity. *Held*, the deed did not create a present charge on the realty.—*Montagu* v. *Earl Sandwich*, 54 L.T. 502.

(viii.) **C. A.**—*Mineral Lease—Tenant for Life—Person entitled to Income of Proceeds of Sale—Settled Land Act*, 1882, *s.* 11.—A person entitled to the income of the proceeds of sale of land subject to a trust for sale, though not " impeachable for waste," is only entitled to receive as income one-fourth of the royalties under a mineral lease.—*Re Ridge ; Hellard* v. *Moody*, L.R. 31 Ch. D. 504 ; 54 L.T. 549.

(ix.) **C. A.**—*Post-nuptial—Children—Volunteers—Disentailing Assurance of Copyhold—Fines and Recoveries Act*, ss. 40, 41, 47, 50, 53.—Children being volunteers cannot enforce specific performance of the covenants contained in the post-nuptial settlement of their parents. A disentailing assurance of copyholds is void if not entered upon the Court Rolls of the manor within six months after execution.— *Green* v. *Paterson*, L.R. 32 Ch. D. 95 ; 54 L.T. 738.

(i.) **Ch. D.**—*Power of Appointment—Revocation.*—A testamentary power of appointment was exercised in a will with no other dispositions. Subsequent wills were made, each containing a clause revoking all other wills. *Held*, the first will was revoked, the property going as in default of appointment.—*Wilkins* v. *Pryer; re Kingdon*, 34 W.R. 634; 54 L.T. 753.

(ii.) **Ch. D.**—*Power of Charging—Insufficiency of Estate—Priority.*—Where in a deed executing a power of charging portions, trusts for raising one portion are declared to be "subject and without prejudice" to trusts for raising another portion, the latter portion has priority in the event of the estate being insufficient to satisfy both. But a direction that all the portions should be charged *pari passu* counteracts the effect of a declaration that the trusts for raising one portion should be subject to those for raising another.—*Wilson* v. *Kenrick*, L.R. 31 Ch. D. 658; 55 L.J. Ch. 525; 54 L.T. 461.

(iii.) **Ch. D.**—*Proceedings for Protection of Settled Estates—Committee of Privileges—Costs—Settled Land Act*, 1882, *s.* 2, *sub-s.* 10, *cl.* 1, *s.* 36.—Proceedings before the Committee of Privileges of the House of Lords by which the title to an earldom was established, and which in fact established the title of the claimant to settled estates, are proceedings for the protection of the estates, the costs of which may be charged on the estates.—*In re Earl of Aylesford's Settled Estates*, L.R. 32 Ch. D. 162; 55 L.J. Ch. 523; 54 L.T. 414.

(iv.) **Ch. D.**—*Proceeds of Sale—Transmission Abroad.*—A person entitled to a share of land died domiciled in America, and his wife and son (a minor) were resident there. The land was sold. *Held*, trustees must be appointed under the Act to receive the share in America.—*Edwards* v. *Lloyd; re Lloyd*, 54 L.T. 643.

(v.) **Ch. D.**—*Tenant for Life—Power to Sell.*—Land appointed to the use that trustees might during the joint lives of father and son receive a yearly rent charge to be charged on the land, and subject thereto, the land was to be to the use of father for life with remainder to son W. and remainder to son G. Trustees were to sell rent charge and the life estate and pay proceeds to W. and G. in equal shares as tenants in common. W. and G. covenanted not to claim to have the rent charge or life estate made over to them in specie. After father's death W. and G. contracted to sell some land in fee: *Held*, that as either alone, or both together, might bid at any sale by the trustees, they must be treated as if they had bought the life estates back, in which case they would be tenants for life, and could therefore sell under the Settled Land Act, 1882.—*Re Hale and Clark*, 34 W.R. 624; 55 L.J. Ch. 550.

(vi.) **Ch. D.**—*Tithes—Annuity.*—Tithes are an incorporeal hereditament, and therefore come under Settled Land Act, 1882, s. 2, sub-s. (10). An annuity created by a settlement of such tithes is not a rent; but an incumbrance on the tithes.—*Esdaile* v. *Esdaile; re Esdaile*, 54 L.T. 637.

See Bankruptcy, p. 108, vii. Husband and Wife, p. 118, ix., x.; p. 119, i., vi., vii.

Ship:—

(vii.) **P. D.**—*Collision—Damages for Loss of Life—Improper Navigation.*—Where a collision occurred through the fault of both vessels, an action for damages cannot be maintained by the representatives of deceased persons on one vessel against the owners of the other.—*The Bernina*, L.R. 11 P.D. 31; 55 L.J. P. 21; 34 W.R. 595; 54 L.T. 499.

(viii.) **P. D.**—*Collision—River Tyne—Compulsory Pilotage.*—The provisional order in the schedule to the Tyne Pilotage Act, 1865, supersedes the regulations of 41 Geo. III., c. lxxxvi., and under them pilotage is not compulsory on any vessels in the Tyne.—*The Johann Sverdrup*, L.R. 11 P.D. 49; 55 L.J. P. 28; 54 L.T. 800.

(i.) **P. D.**—*Disbursements—Master—Ship's Stores.*—Master agreed with managing owner to find provisions for officers and crew at a certain rate. He afterwards agreed that the managing owner, a ship's store dealer, should supply the provisions, charging them against the money of the master in his hands. He debited his co-owners with the cost, and fraudulently retained the master's money. *Held,* the master entitled to credit the amount in settlement of accounts with the owners.—*The Dora Tully,* 54 L.T. 467.

(ii.) **C. A.**—*Freight—Counterclaim for Short Delivery—Bill of Lading—Estoppel.*—The bill of lading acknowledged receipt of a larger quantity of goods than had actually been put on board and delivered; master's receipts had been given as agent for the captain. *Held,* the bill of lading is not conclusive against shipowner, who is not liable for goods not actually shipped: except under the Bills of Lading Act, which did not apply to the case, as the bills had not been signed by or for him—*Thorman* v. *Burt,* 54 L.T. 349.

(iii.) **C. A.**—*General Average—Liverpool Bonds.*—Decision of Q. B. D. (*see* Vol. **11**, p. 96, viii.) affirmed—*Huth* v. *Lamport; Gibbs* v. *Lamport,* L.R. 16 Q.B.D. 735; 55 L.J. Q.B. 239; 54 L.T. 334, 663.

(iv.) **P. D.**—*Limitation of Liability—Crown—Fund in Court—Time.*—The Crown may claim against a fund paid into Court by the owners of a ship in order to limit their liability by the general law and also under the Admiralty Suits Act, 1868, s. 3; such claims are not necessarily excluded by the fact that the time fixed by the Court for entering claims has elapsed.—*The Zoe,* L.R. 11 P.D. 72.

(v.) **Q. B. D.**—*London and St. Katherine Docks Act,* 1864, *ss.* 100, 101—*Vessel—Barge.*—A barge propelled only by oars is not a vessel which, by the London and St. Katherine Dock Act, 1864, is required to be in charge of some person while in the docks.—*Hedges* v. *London and St. Katherine Docks Co.,* 34 W.R. 503; 54 L.T. 427.

(vi.) **P. D.**—*Master's Authority to Provide Necessaries—Charter-Party.*—The master, having knowledge of the contents of a charter-party, is the owners' agent to provide such necessaries only as by the charter-party are to be paid for by them.—*The Turgot,* 34 W.R. 552.

(vii.) **C. A.**—*Overtaking Ship—Regulations—Arts.* 11, 20.—A vessel is overtaking another within Arts. 11 and 20 (1884), when she is approaching the other in a position in which she cannot see the lights of the overtaken vessel, and that vessel is bound to shew from her stern a white or a flare-up light in reasonable time, though she does not herself apprehend the danger.—*The Main,* 34 W.R. 678.

(viii.) **P. D.**—*Towage.*—There is an implied obligation in a contract of towage, that the tug shall be efficient and properly equipped for the service, and a proviso that the owners will not be responsible for the master's default, does not release them from the obligation.—*The Undaunted,* L.R. 11 P.D. 46; 55 L.J. P. 24; 34 W.R. 686; 54 L.T. 542.

See Insurance, p. 120. Landlord and Tenant, p. 121, iii.

Solicitor:—

(ix.) **Ch. D.**—*Costs—Attempted Sale by Trustees—Change of Trustees and Solicitors—Solicitors Remuneration Act,* 1881—*General Order, r.* 2 (*c*), *sched.* 1, *pt.* 1, *r.* 2.—The costs of an attempted sale by trustees where the trustees and solicitors have since been changed are to be taxed under General Order, r. 2 (c).—*In re Dean; Ward* v. *Holmes,* L.R. 32 Ch. D. 209; 55 L.J. Ch. 420.

(i.) **Ch. D.**—*Costs—Vendor and Purchaser—Inaccurate Particulars.*—A solicitor inserted an inaccurate statement in particulars of sale which he attempted to cover by a condition. The C. A. held purchaser need not complete. In taxing costs as between vendor and the solicitor: *Held*, the costs of the abortive sale must be disallowed.—*Re X.*, 54 L T. 634.

(ii.) **Ch. D.**—*Costs Incurred Prior to Retainer.*—Investigations were undertaken without retainer: the work was afterwards adopted and paid for by the administrator: on taxation the master was to be allowed to state special circumstances. *Held*, as he had done so, the Court had power under Solicitors Act, 1843, s. 41, to allow the costs, irrespective of consent of next-of-kin.—*Re Hill*, 54 L.T. 566.

(iii.) **C. A.**—*Costs of Taxation—Trustee in Bankruptcy.*—The Solicitors Act, 1843, does not apply to the taxation of a bill of costs of solicitors to a trustee in bankruptcy, so as to make them liable to pay costs of taxation when the bill is reduced by more than one-sixth.—*E. p. Marsh*; *re Marsh*, 34 W.R. 620.

(iv.) **Q. B. D.**—*Costs—Taxation—Reduction of Charges.*—After delivery of bill of costs and objection taken to it, although it be unsigned, another cannot be substituted for it.—*E. p. King*; *re Jones*, 54 L.T. 648.

(v.) **C. A.**—*Counsel's Fees—Refreshers—Consultation Fees.*—In the absence of express agreement the taxing master has no jurisdiction to allow refreshers exceeding the amount fixed by section 65, rule 27 (48). There is no rule that junior counsel's fees shall bear a proportion to leading counsel's fees when these are special.—*Re Harrison*, 34 W.R. 645.

(vi.) **Ch. D.** — *Investment of Client's Moneys — Declaration of Trust — Evidence—Defence of Purchase for Value without Notice.*—A solicitor having moneys of a client for investment by representing that the moneys are advanced on the mortgage of a property declares a trust in favour of his client of a mortgage of that property which he has effected in his own name.—The onus of establishing a defence of purchase for value without notice is on the person asserting the defence, and the evidence must be clear and satisfactory. — *In re Vernon, Ewens & Co.*, L.R. 32 Ch. D. 165; 54 L.T. 365; 34 W.R. 606.

(vii.) **Ch. D.**—*Lien on Documents—Infant Plaintiffs—Administration Action —Change of Solicitor.*—In an administration action commenced by infant plaintiffs by next friend, the next friend was changed and also the solicitor. The proceedings were likely to last several years. The old solicitors were ordered to deliver up documents necessary to the suit, from time to time, subject nevertheless to their lien for costs.—*Hutchinson v. Norwood*; *re Hutchinson*, 34 W.R. 637; 55 L.J. Ch. 375.

(viii.) **C. A.**—*Order for Payment—Default Subsequent to Order Striking Off Rolls—Attachment.*—A solicitor making default in payment under an order made against him as a solicitor is liable to attachment, although in the meantime he has been struck off the rolls.—*Re Strong*, L.R. 32 Ch. D. 342; 55 L.J. Ch. 506; 34 W.R. 614.

(ix.) **Ch. D.**—*Solicitor Acting as Agent—Indorsement of Petition.*—A London solicitor acting as agent ought in the indorsement of a petition to describe himself as such.—*In re Scholes*, L.R. 32 Ch. D. 245; 34 W.R. 515; 54 L.T. 466.

(x.) **C. A.**—*Taxation of Bill—6 & 7 Vict., c. 73, ss. 37, 38, 39.*—The trustee in bankruptcy of a mortgagor is entitled to an order to tax the bill of the mortgagee's solicitor for costs incurred in selling the mortgaged property.—*In re Allingham*, L.R. 32 Ch. D. 36; 34 W.R. 619.

(i.) **C. A.**—*Taxation—Agreement for Lease.*—A solicitor is not entitled to any extra payment for an agreement for a lease when it is followed by a lease.—*Re Emanuel & Simmonds*, 34 W.R. 613.

(ii.) **Ch. D.**—*Taxation—Solicitor Trustee—Profit Costs*—Charges made by a solicitor trustee which it is the duty of trustee to check, disallowed, as he had placed himself in a position in which his duty and interest conflicted.—*Lawton* v. *Elwes; re Corsellis*, 34 W.R. 680.

(iii.) **C. A.**—*Title Deeds—Custody.*—The owner of two estates gave the title deeds to her solicitor. On her death the estates were separated, one going to the plaintiff, the other to the heir who could not be found. *Held*, the plaintiff could not recover possession of the deeds without concurrence of the heir. They were ordered to be deposited in Court with liberty to plaintiff to inspect.—*Wright* v. *Robotham*, 34 W.R. 668.

See Administration, p. 106, iv. Company, p. 112, i. Mortgage, p. 123, viii. Partnership, p. 124, vii.

Stock Exchange :—

(iv.) **C. A.**—*Sale of Goods—Carrying Over.*—"To continue" does not constitute a loan, but a sale and re-purchase of stock.—*Bongiovanni* v. *Société Générale*, 54 L.T. 320.

See Bankruptcy, p. 108, v. Criminal Law, p. 114, ii. Principal and Agent, p. 128, ii.

Tithes :—

(v.) **C. A.**—*Lapse of Time—Presumption of Release.*—Decision of Ch. D. (*see* Vol. **11**, p. 23, iii.) affirmed.—*Esdaile* v. *Payne* (*No.* 2), 54 L.T. 705.

Trade-Mark :—

(vi.) **C. A.**—*Registration—Similarity—Patents Act*, 1883, *ss.* 64, 65, 72.—In considering whether a trade-mark, of which the registration is sought, is sufficiently like a previously registered mark to be calculated to deceive, the comparison must be made with the old mark as registered and not as actually used.—*In re Lyndon's trade-mark*, L.R. 32 Ch. D. 109; 55 L.J. Ch. 456; 54 L.T. 405.

(vii.) **C. A.**—*Registration—Words Common to Trade—User Prior to Application—Disclaimer.*—A label containing *inter alia* the maker's name and words common to the trade. *Held*, distinctive, and capable of registration as a whole: and that terms enforcing a disclaimer of the common words could not be imposed. — *Re Hudson's trade-mark*, L.R. 32 Ch. D. 311; 34 W.R. 616; 55 L.J. Ch. 531.

(viii.) **C. A.**—*Special and Distinctive Word.*—A "special and distinctive word" in section 10, Trade Marks Act, 1875, means a word which distinguishes the goods as being made or sold by the owner of the mark; and by using additional words so as to induce the general public to believe that goods so marked are of foreign brand or manufacture, the inventor of the word is precluded from saying that it is distinctive of his own manufacture so as to be capable of registration.—*Wood* v. *Lambert & Butler; re Wood's trade-mark*, L.R. 32 Ch. D. 247; 55 L.J. Ch. 377; 54 L.T. 314.

(ix.) **C. A.**—*Special and Distinctive Words.*—To entitle a person to register as a mark under Trade Marks Act, 1875, s. 10, special and distinctive words or a combination of words or letters, used as a mark before that Act passed, the words must have been used by themselves, and not in conjunction with any other device.—*Re Spencer's trade-mark*, 54 L.T. 659.

Tramway:—

(i.) **Q. B. D.**—*By-law—Reasonableness.*—A by-law providing that a passenger shall deliver up his ticket when required to do so, or pay the fare for the journey is reasonable.—*Heap* v. *Day*, 34 W.R. 627.

Trustee:—

(ii.) **Ch. D.**—*Appointment of New—Absconding Bankrupt.*—Order made appointing existing trustees new trustees in the place of themselves and absconding bankrupt trustee.—*Davies* v. *Hodgson*, L.R. 32 Ch. D. 225.

(iii.) **Ch. D.**—*Discretionary Power—Power in the Nature of a Trust—Release.*—A trustee having a discretionary power in the nature of a trust cannot release or covenant not to exercise it.—*Saul* v. *Pattinson*, 34 W.R. 561; 54 L.T. 670.

(iv.) **Ch. D.**—*Investment—Liability of Trustee.*—A trustee making an advance on the borrower's valuation alone is not acting as a prudent man, and must restore the trust funds.—*Walcott* v. *Lyons*, 54 L.T. 786.

(v.) **Ch. D.**—*Investment—Mortgage of Trade Property.*—A mortgage of business property the value of which depends on the prosperity of the business is not a proper investment for trustees who have power to invest on real securities.—*In re Whiteley; Whiteley* v. *Learoyd*, L.R. 32 Ch. D. 196; 55 L.J. Ch. 528; 54 L.T. 491.

See Lunatic, p. 121, ix.; p. 122, ii. Solicitor, p. 133, ii.

University:—

(vi.) **Q. B. D.**—*Oxford—Jurisdiction of Chancellor's Court.*—An action for libel published in London brought by a plaintiff in London having no connection with the university against a resident undergraduate is within the jurisdiction of the Chancellors' Court under 14 Henry VIII. and 13 Eliz.—*Ginnett* v. *Whittingham*, L.R. 16 Q.B.D. 761; 34 W.R. 565.

Vaccination:—

(vii.) **Q. B. D.**—*Default of Parent's Appearance.*—An order for vaccination of a child may be made under Vaccination Act, 1867, s. 31, on a parent duly summoned even if he fails to appear.—*R.* v. *Cinque Port Justice*, L.R. 17 Q.B.D. 191.

Vendor and Purchaser:—

(viii.) **C. A.**—*Jurisdiction on Summons—Interest on Deposit—Costs of Investigating Title.*—Where vendor's title is held bad on summons under V. & P. Act, 1874, the Court, in ordering the deposit to be returned, may order vendor to pay interest on it, and the purchaser's costs of investigating title.—*Re Hargreaves & Thompson*, 34 W.R. 708.

(ix.) **C. A.**—*Public Undertaking—Lands Clauses Act—Purchase by Agreement—Taking Possession.*—The power conferred by the Lands Clauses Act of taking possession pending the settlement of the price is only applicable to a compulsory taking and cannot be used where land is taken by agreement.—*Bygrave* v. *Metropolitan Board of Works*, L.R. 32 Ch. D. 147.

(x.) **C. A.**—*Rescission of Contract—Misdescription.*—The vendor is entitled to rescind a contract under a condition in that behalf where the purchaser has demanded an abatement of the purchase money in consequence of the property being misdescribed in the particulars. Whether a condition that no misdescription should annul the sale, and

that no compensation should be allowed prevents a purchaser from obtaining specific performance with abatement, the deficiency being as much as one-third—*quære.*—*In re Terry and White's Contract,* L.R. 32 Ch. D. 14; 55 L.J. Ch. 345; 54 L.T. 353.

(i.) **Ch. D.**—*Rents and Profits—Sale by Contract.*—An order directing sale of freeholds was made in an administration action: money to be paid into court before a certain date, or, in default, interest to be charged: on payment purchaser to be entitled to possession or rents and profits as from that date.—In an order for payment made on a purchaser who had not complied with the conditions, the court refused to give him credit for rents and profits already received.—*Day* v. *Bonaini; re Smith,* 54 L.T. 567.

(ii.) **Ch. D.**—*Sale under Power in Mortgage.*—Property mortgaged to two mortgagees with power of sale, their receipts to be sufficient discharge to purchasers. The power of sale to be vested in any persons for the time being entitled to receive the money owing on the mortgage. It was declared that the sum advanced belonged to the mortgagee in certain proportions. A purchaser *held* not entitled to a statement on the conveyance of these proportions, the joint receipts being a good discharge.—*Re Parker & Beech's Contract,* 54 L.T. 750.

(iii.) **Ch. D.**—*Specific Performance—Order to Pay Purchase Money.*—In action for specific performance, the vendor obtained judgment for payment of purchase money on delivery up of deeds. On refusal to pay, the Court ordered the vendor to deposit the deeds in Court and the money to be paid in four days.—*Bell* v. *Denvir,* 34 W.R. 638; 54 L.T. 729.

(iv.) **Ch. D.**—*Specific Performance—Order to Pay Purchase Money.*—The defendant to a suit for specific performance who has evaded compliance with judgment and order on further consideration, ordered within four days to pay the sum found due with interest.—Form of order.—*Morgan* v. *Brisco,* L.R. 32 Ch. D. 192.

See Solicitor, p. 132, i.

Will :—

(v.) **Ch. D.**—*Accumulation—Maintenance.*—Testator directed accumulation of real and personal estate for 21 years, the whole then to go to sister for life, then to her son A. for life, and to the children in tail male, then to her son B. then to her son C., in tail male. Order made directing an annual sum to be paid to the sister out of income of personalty for maintenance and education of her three sons.—*Collins* v. *Collins; re Collins,* L.R. 32 Ch. D. 229; 34 W.R. 650.

(vi.) **Ch. D.**—*Admission of Assets—Legacy.*—The estate of an executor held liable to meet an annuity on a letter to the annuitant which was practically an admission of the existence of the fund.—*Payne* v. *Tanner,* 34 W.R. 714.

(vii.) **Ch. D.**—*Construction.*—Testator gave his wife "all my property, leasehold and freehold which I now possess": *Held,* all his property passed, and not only leasehold and freehold.—*Kiff* v. *Roberts; re Roberts,* 34 W.R. 626; 54 L.T. 386.

(viii.) **Ch. D.**—*Construction.*—"All my property settled on my marriage over which I have any disposing power" in virtue of a settlement; *held,* to include property over which the power of appointment was acquired subsequently.—*Pengelley* v. *Herbert; re Old's Trusts,* 54 L.T. 677.

(i.) **Ch. D.**—*Construction—Division per Stirpes.*—A gift of the proceeds of sale of houses after the death of the survivor of two tenants for life "equally amongst all and every the child and children" of the tenants for life "in equal shares and proportions," is a direction to divide *per stirpes.*—*In re Campbell's Trusts*, L.R. 31 Ch. D. 685; 55 L.J. Ch. 389 34 W.R. 629; 54 L.T. 419.

(ii.) **Ch. D.**—*Construction—Exercise of General Power of Appointment.*—The appointment of an executor by a person exercising a general power of appointment by will is not sufficient to shew his intention to make the subject of the power his own property.—*In re Thurston; Thurston* v. *Evans*, 34 W.R. 528.

(iii.) **Ch. D.**—*Construction—Fortune—Foreign Realty—Election.*—Testatrix of French birth but English domicil made a will in French language but English form. After certain bequests, the residue of fortune to go to grandson. All the realty was in France, and personalty insufficient for debts and legacies. *Held*, although the gift was universal, the inference could not be drawn that the testatrix intended it to include property incapable of being given by the particular instrument.—*Baring* v. *Ashburton*, 54 L.T. 463.

(iv.) **Ch. D.**—*Gift for Separate Use without Power of Anticipation—Marriage Settlement—Covenant to Settle after Acquired Property.*—The *corpus* of real and personal estate given to a married woman for her separate use without power of anticipation cannot be transferred to her, and is not bound by a covenant in her marriage settlement to settle after acquired property.—*In re Currey; Gibson* v. *Way*, 34 W.R. 541; L.R. 32 Ch. D. 361; 54 L.T. 665.

(v.) **C. A.**—*Construction—Gift of Sum to be Settled—Mode of Settlement—Costs.*—A gift of a sum to a married daughter to be settled on her for life with remainder, as to part to her children equally, and as to part to her husband, an executory trust. No power of appointment to be inserted in the settlement, and only the present husband and children of the present marriage to be included. The costs are to be borne by the fund, not out of the residuary estate.—*In re Parrott; Walter* v. *Parrott*, 34 W.R. 553.

(vi.) **C. A.** — *Construction — Gift to Children — Illegitimate Child.*—The description of a woman to whom the testator was not validly married as his "wife" does not make a gift to "children" include after-born illegitimate children by her.—*In re Bolton; Brown* v. *Bolton*, L.R. 31 Ch. D. 542; 55 L.J. Ch. 398; 54 L.T. 396.

(vii.) **C. A.**—*Construction—Gift to Children—Illegitimate Children—Codicil.*—An immediate legacy in a will made by a testator in a dangerous illness to the "children" of a person who has only illegitimate children is a good gift to those children as *personæ designatæ.* A gift by codicil of a fund after a life interest to the "children" of the same person applies to the same children as the gift in the will.—*In re Haseldine; Grange* v. *Sturdy*, L.R. 31 Ch. D. 511; 54 L.T. 322.

(viii.) **Ch. D.**—*Construction—Inconsistent Residuary Gifts.*—The latter of two inconsistent residuary gifts must fail where there is in fact no lapse.—*In re Spencer; Hart* v. *Manston*, 34 W.R. 527; 54 L.T. 597.

(ix.) **Ch. D.**—*Construction—Money.*—The word "money" held to include rents due to testator and proceeds of sale of a turnpike bond.—*Lloyd* v. *Lloyd*, 34 W.R. 608.

(i.) **Ch. D.**—*Name and Arms Clause — Forfeiture —Disentailing Deed.*—Realty devised in strict settlement the will containing an ordinary name and arms clause. Bequest of personalty to trustees so that it should go with the realty. The clause was not to affect the personalty, but another was substituted. The first tenant for life assumed the name and arms; his son, the first tenant in tail, executed a disentailing deed limiting it to himself in fee simple. He then claimed to be indefeasibly entitled in possession to the personalty: *Held*, he was not so entitled, and that his interest was liable to forfeiture if he should not comply with the name and arms clause applying to the personalty.—*Cornwallis* v. *Wykeham-Martin; re Cornwallis*, L.R. 32 Ch. D. 388.

(ii.) **Ch. D.**—*Appointment—Power of Revocation—Validity.*—A power of revocation by two joint appointors or the survivor of them may be annexed to an appointment by the two.—*Dixon* v. *Pyner*, 34 W.R. 528; 54 L.T. 748.

(iii.) **Ch. D.**—*Power of Appointment—Trusts for Children—Class when Ascertained.*—Under a power testator appointed the income of the trust to be paid to her surviving children equally, and in case of death of any of them before or after her, the issue of such children were to take, or their parents should appoint; in default such issue to take equally as tenants in common. All the children survived the testator; but some died without appointing; they had had children, some of whom predeceased their parents: *Held*, the children of such children were to take, whether they survived or not.—*Alexander* v. *Jolley; re Hutchinson*, 54 L.T. 527.

(iv.) **Ch. D.**—*Substitutional Gift—Vesting.*—Residue left to trustees to pay income to widow for life, after her death the residue to be equally divided between all his nephews and nieces, share and share alike, their issue taking the deceased parents share. *Held*, the substitutional gift took effect in the case of any nephew or niece who had survived the testator, but died in the lifetime of his widow.—*Daniel* v. *Matthews; re Gilbert*, 34 W.R. 577; 54 L.T. 752.

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